TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 184.

THE CHICAGO LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

THOMAS B. NEEDLES, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED MARCH 2, 1882.

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INDEX.

	Original.	Print.
Caption	1	1
Writ of error to circuit court of Cook county	3	1
Return to writ of error	3½	2
Transcript from circuit court of Cook county	4	2
Caption	4	3
Summons	5	3
Sheriff's return	6	3
Petition	7	3
Exhibit A—Report of Robt. M. Woods, examiner to T. B. Needles, auditor, July 6, 1877	9	4
Exhibit B—Letter of T. B. Needles, auditor, to J. K. Edsall, attorney general, July 6, 1877	11	6
Order for receiver and injunction	12	6
Answer	14	6
Replication	17	10
Certificate of evidence	18	10
Testimony of Robt. M. Woods	19	11
Duncan Campbell	53	27
George M. Bogue	73	36
Wm. F. Tucker	79	39
Godfrey Snydacker	84	42
Samuel M. Nickerson	99	48

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	Original.	Print.
Testimony of Wm. V. Baker	104	51
Howard Z. Culver	107	52
George M. Bogue, (recalled)	116	56
Charles L. Currier	117	56
S. M. Parish	135	64
Charles L. Currier (recalled)	140	67
Appendix to certificate of evidence	145	69
Exhibit B—Report of Insurance Company to auditor for year ending Dec. 31, 1876	145	69
Exhibit C—Campbell's statement of receipts and disbursements of Insurance Company	147	70
Exhibit D—Campbell's statement of dividends paid to stockholders, Aug., 1871, to Feb., 1877	148	72
Exhibit—Brinkerhoff's report of valuation of policies, &c.	149	72
Exhibit—Extracts from record books of Insurance Company	150	73
Exhibit—First report of G. M. Bogue, receiver of Insurance Company	153	74
Exhibit—Bogue's statement as to Clapp and Barry securities	154	74
Exhibit—Newspaper articles relative to defalcation of Clapp	150	75
Exhibit—Petition for leave to re-insure, July 20, 1877, &c.	160	77
Motion for decree at hearing	170	81
Decree for final injunction	179	85
Certificate of clerk circuit court, Cook county	181	86
Assignment of errors	182	87
Appearance and waiver of *sciæ facias*	184	88
Motion to quash writ of error	186	89
Order overruling motion to quash	186	89
Order taking cause under advisement	187	89
Motion for extension of time to file briefs	188	90
Order granting extension	189	90
Opinion	189	90
Judgment	200	95
Clerk's certificate to record	201	96
Chief Justice's certificate	202	96
Assignment of errors	208	96
The charter and amendment	211	100
Allowance of writ of error and supersedeas	222	105
Writ of error	225	105
Clerk's certificate to filing writ of error	228	107
Bond	229	107
Citation	232	108
Acknowledgments of service of process	233	109
Clerk's certificate to filing bond	235	110
Proof of service on receiver, &c.	239	110

1 UNITED STATES OF AMERICA, *ss.*:

In the Supreme Court. October Term, A. D. 1882.

THE CHICAGO LIFE INSURANCE COMPANY, Plaintiff in Error,

vs.

THOMAS B. NEEDLES, Auditor of Public Accounts of the State of Illinois, Defendant in Error.

Error to the Supreme Court of Illinois.

Transcript of the record and proceedings in this cause in the circuit court of Cook county, in the State of Illinois, and in the supreme court of said State, with the writ of error and citation from the Supreme Court of the United States, with proof of service and accompanying papers.

C. C. Bonney, solicitor and counsel for the Chicago Life Insurance Company.

2 STATE OF ILLINOIS:

Supreme Court, Northern Grand Division.

At a supreme court begun and held at Ottawa, on Tuesday, the sixth day of September, in the year of our Lord one thousand eight hundred and eighty-one, within and for the northern grand division of the State of Illinois.

Present: Alfred M. Craig, chief justice; Pinkney H. Walker, justice; Benj. R. Sheldon, justice; T. Lyle Dickey, justice; Jno. Scholfield, justice; John M. Scott, justice; John H. Mulkey, justice; James McCartney, attorney general; Thomas Clark, sheriff; Everell F. Dutton, clerk.

Be it remembered that heretofore, to wit, on the 13th day of August, A. D. 1881, The Chicago Life Insurance Company, by C. C. Bonney, Esq., its solicitor, filed in said court its certain *praecipe* and caused to be issued out of said court, under the seal thereof, a writ of error to the circuit court of Cook county, which said writ and the clerk's return endorsed thereon is in words and figures following, to wit:

3 STATE OF ILLINOIS, } *ss.*:
Supreme Court, Northern Grand Division, }

The people of the State of Illinois to the clerk of the circuit court for the county of Cook, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of Cook county, before the judge thereof, between Thomas B. Needles, auditor of public accounts of the State of Illinois, petitioner, and The Chicago Life Insurance Company, defendant, it is said manifest error hath intervened, to the injury of the aforesaid The Chicago Life Insurance Company, as we are informed by its complaint, and we

being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our justices of the supreme court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices as aforesaid, at Ottawa, in the county of La Salle, on the first Tuesday of September, next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness the Hon. Alfred M. Craig, chief justice of our court, and the seal thereof, at Ottawa, this 13th day of August, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] E. F. DUTTON,
Clerk of the Supreme Court.

3½ *Return to the within Writ.*

STATE OF ILLINOIS, }
County of Cook, } ss:

I, the undersigned, clerk of the circuit court within and for said county, do hereby certify and return to the within writ of error, that the papers hereto annexed are a full, true, and complete transcript of the papers and matters of record on which the within-named case was heard and decided in and by said circuit court, as appears from the certificate of evidence and final decree therein; and that the papers and matters of record annexed thereto as an appendix, pursuant to the accompanying *præcipe* for said transcript, are true copies of the original on file or of record in my office.

Witness my hand and the seal of said court, at my office in Chicago, August seventeenth, A. D. 1881.

[SEAL.] JACOB GROSS, *Clerk.*

[Endorsed:] No. 145. Supreme court of Illinois, northern grand division. The Chicago Life Insurance Company *vs.* Thomas B. Needles, auditor, &c. Writ of error. This writ of error is made a supersedeas, and as such is to be obeyed by all concerned. ———, clerk. Filed Aug. 16, A. D. 1881. Jacob Gross, clerk.

4 And afterwards, to wit, on the 3d day of September, A. D. 1881, there was filed in said court a certain transcript of the record of the circuit court of Cook county, which said transcript is in the words and figures following, to wit:

UNITED STATES OF AMERICA:

STATE OF ILLINOIS, }
Cook County, } ss:

Pleas before the Honorable Murray F. Tuley, one of the judges of the circuit court of Cook county, at a term thereof begun and held at Chicago, in said county and State, on the third Monday (being the twentieth day) of June, in the year of our Lord one thousand

eight hundred and eighty-one, and of the Independence of the United States the one hundred and fifth.

Present: Honorable Murray F. Tuley, one of the judges of the circuit court of Cook county, State of Illinois; L. L. Mills, State's attorney; O. L. Mann, sheriff.

Attest: JACOB GROSS, *Clerk.*

Be it remembered that heretofore, to wit, on the seventh day of July, A. D. 1877, Thomas B. Needles, auditor of public accounts of the State of Illinois, by E. B. Sherman, Esq., his solicitor, filed in said court his certain petition, and caused to be issued out of said court, under the seal thereof, the people's writ of summons, directed to the sheriff of Cook county, to execute; which said petition and writ, together with the sheriff's return endorsed thereon, are in the words and figures following, to wit:

Summons.

STATE OF ILLINOIS, } ss.:
County of Cook, }

The people of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon Chicago Life Insurance Company, if it shall be found in your county, personally to be and appear before the circuit court of Cook county on the first day of the next term thereof, to be holden at the court-house in Chicago, in said Cook county, on the third Monday of August next, to answer unto Thomas B. Needles, State auditor, &c., in his certain bill of complaint filed in said court on the chancery side thereof.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Jacob Gross, clerk of said court, and the seal thereof, at Chicago, in said county, this 10th day of July, A. D. 1877.

[SEAL.] JACOB GROSS, *Clerk.*

Endorsed is as follows: Served this writ on the within-named Chicago Life Insurance Company by reading and delivering a copy thereof to William F. Tucker, president of said company, this 10th day of July, A. D. 1877. Charles Kern, sheriff, per E. F. Cullerton, deputy. P'd, 1.00.

THE CASE OF THE CHICAGO LIFE INSURANCE COMPANY.

Auditor's Petition under Dissolution Act.

STATE OF ILLINOIS, } ss.:
Cook County, }

In the Circuit Court of Cook County. In Chancery. To the July Term, A. D. 1877.

To the honorable the judges of the circuit court of Cook county, in chancery sitting:

Your petitioner, T. B. Needles, auditor of public accounts for the

State of Illinois, respectfully represents as such auditor, and in his official capacity:

That he has lately, as auditor, as aforesaid, caused an examination to be made in pursuance of an act of the General Assembly of said State, entitled "An act in regard to the dissolution of insurance companies," approved February 17, 1874, and in force July 1, 1874, of the "Chicago Life Insurance Company," of Chicago, a corporation organized and existing under and by virtue of, and subject to, the laws of said State of Illinois, and having its principal place of business in the city of Chicago, and that the result of the said examination and the general condition and amount of the assets and
8 liabilities of said company appear in schedule hereto annexed and marked "Exhibit A," and which your petitioner craves may be taken and considered as a part hereof.

And your petitioner shows that from such examination he is of the opinion that the condition of said company is such as to render its further continuance in business hazardous to the insured therein, and that your petitioner has so certified to the attorney general, as appears from the exhibit hereto annexed and marked "Exhibit B."

Therefore your petitioner prays that the said company may be summoned to answer your petitioner respecting the matter herein set forth, and that they may be enjoined and restrained from further proceeding with their said business, and that a receiver may be appointed to take charge of the real estate and effects of said company, in pursuance of the act aforesaid, and with the powers therein prescribed and usually vested in a receiver.

And that in the mean time, and until the cause may be heard, the said company may be temporarily enjoined, as above prayed, and that a receiver be named and empowered.

And that your petitioner may have such other and further relief as may be meet.

And the petitioner prays that the usual writs of summons and injunction may be issued as aforesaid.

And your petitioner will ever pray, etc.

(Signed) J. K. EDSALL,
Attorney General.
THOMAS B. NEEDLES,
Auditor of Public Accounts of the State of Illinois.
By E. B. SHERMAN,
Solicitor of Complainant and of Counsel.

Gen. No. 25283; Term No. 1094. Filed July 7, 1877.

9 EXHIBIT A.

"The Hon. T. B. NEEDLES, *Auditor.*

"SIR: In pursuance of your directions of the 15th ultimo, I have made an examination of the condition and affairs of the Chicago Life Insurance Company, of the city of Chicago.

"I find that the company has been doing a losing business for several years. Its income has been small, and constantly decreasing, yet its salaries and office expenses have been large, and it has made

large annual dividends to its stockholders, which were unwarranted by the condition of the company. The interest on its securities is largely in arrears, and no interest appears to have been collected on the securities upon which the capital stock is based, thus depriving the company of its needed revenue.

"The loans for the company appear to have been made through a syndicate, composed of Mr. Secretary Clapp and Mr. J. K. Barry, a capitalist, in the following manner: These parties purchased securities, and, from time to time, when the company had money to pay for them, would turn them over to the company. In like manner, the syndicate loaned money, presumably from their own private funds, but the notes, trust deeds, etc., were taken in the name of the company, and, as fast as the company had money to pay, the securities were turned over to the company.

"This manner of doing business was pursued for two reasons: Firstly, because it enabled the syndicate to make a percentage on the securities thus bought and transferred, and a commission on the loans thus made; and, secondly, because it enabled the management to represent the mortgages, trust deeds, and notes thus made in the name of the Chicago Life Insurance Company as the *bona fide* property of the company to any examining committee of the board of directors, or to any State insurance examiner who might investigate. The last annual statement to your officer contains $64,000 worth of these securities, which did not belong to the company at the time, $8,000 of which have, however, been transferred to the company since. The company also holds a mortgage which has been included in the annual statements since 1872, of $15,000, from W. F. Tucker, for which no value received appears to have been given.

"After my examination had progressed a week or ten days, and when I had arrived at that stage which made it necessary to trace the assets through the cash, and see if the company held valid title to all the assets claimed, the secretary, Mr. John W. Clapp, disappeared. No trace of him has been discovered up to the present time. This rendered the work of examination laborious and perplexing. Col. Kellogg and myself made as thorough a search through the books and accounts as our limited time would allow, and succeeded in unearthing the facts above named, and ascertaining the condition of the company, which is given below. The accounts show Mr. Clapp to be indebted to the company to the amount of $5,042.87, but a critical examination of the accounts for a series of years might prove his indebtedness to be much larger. The accounts of all other officers and employes seem to be correct and proper. The following are the assets and liabilities of the company, as of date, June 1, 1877:

Assets.

Loans on mortgages and trust deeds		$161,421
Loans on collaterals		22,600
Interest due and accrued		4,691
Deferred premiums	$87,111	
	1,422	
		5,689

Outstanding premiums	5,517	
	1,103	
		4,414
Loans on policies in force		8,637
Cash		2,161
		$209,615
Deduct for overvaluation of real estate		12,930
Total		$196,685

11 *Liabilities.*

Net present value, actuaries 4 per cent.	$333,276
Death losses	8,400
Salaries, rent, etc.	3,181
Total	$344,857

Leaving an impairment of $148,171.58. The impairment on the American 6 per cent. or commercial basis would be $75,205.58.

"With so great an impairment, and taking into consideration its history and the present condition of its management, this company can have no future. The company is insolvent within the meaning of the statute, and I therefore recommend that you take immediate steps for the appointment of a receiver that the affairs of the company may be wound up as quickly as possible, and to the best interests of the policy-holders."

Given under my hand, this sixth day of July, A. D. 1877.

(Signed) ROBERT M. WOODS,
Chief Clerk Insurance Department, Examiner.

Filed July 7, 1877.

EXHIBIT B.

(Copy.)

STATE OF ILLINOIS, AUDITOR'S OFFICE,
SPRINGFIELD, *July* 6, 1877.

Hon. J. K. EDSALL, *Attorney General, Springfield.*

SIR: In accordance with authority vested in me by an act, entitled "An act in regard to the dissolution of insurance companies," approved February 17, 1874, in force July 1, 1874, I have caused an examination to be made of the Chicago Life Ins. Co., of Chi-
12 cago, Ills., and find as a result of said examination that it is insolvent within the meaning of the statute, and that it should therefore be prohibited from doing business.

I therefore respectfully ask that you should take legal measures to place it in the hands of a receiver as soon as possible.

I am, sir, very respectfully, T. B. NEEDLES,
Auditor P. A.

Filed July 7, 1877.

Order Appointing a Receiver and Granting an Injunction.

In the Circuit Court of Cook County. In Chancery. In the July Term, A. D. 1877.

THOMAS B. NEEDLES, Auditor, &c.,
vs.
THE CHICAGO LIFE INSURANCE CO., OF CHICAGO.

Petition. (Order of July 7, 1877.)

And now comes said complainant, by E. B. Sherman, his solicitor, and moves the court to appoint a receiver of said company pursuant to the statute in such case made and provided, and said defendant, having been duly served with notice, also comes by C. C. Bonney, its solicitor, appearing for the purposes of this motion, and not waiving any of the rights of said defendant, but insisting upon the same; and the court having heard counsel on said motion, it is thereupon ordered that George M. Bogue, of Chicago, in county of Cook, be, and he is hereby, etc., appointed receiver of all and singular the real estate, personalty, choses in action, bonds, bills, notes, securities, evidences of indebtedness, books, records, moneys,
13 checks, drafts, and property and assets of every nature, real and personal, of and belonging to said defendant, or in any manner held in trust for, or subject to the control of, said defendant, as the same are on this 7th day of July, with power to take possession of the same forthwith, and to institute any and all necessary proceedings or actions to recover the same, either at law or in equity.

And it is further ordered, that the president and secretary of said Chicago Life Insurance Company do on request, without delay, execute and deliver to said receiver all necessary deeds, conveyances, and assurances of title proper and requisite to carry out the foregoing order, and to vest in said receiver full title to all and singular the properties, assets, and choses in action of said defendant, and that said receiver do have and exercise all and singular the rights and powers conferred upon such receiver by the statutes of this State in that behalf.

And it is further ordered, that said receiver give bond in the sum of two hundred thousand dollars, with good and sufficient sureties to be approved by the court, conditioned for the faithful performance of his duties as such receiver; and that on the approval of such bond he be forthwith empowered with all the rights and powers of such receiver as aforesaid, and with the usual powers of a receiver in equity, with liberty to apply to the court from time to time for such further directions and orders as may be necessary to the discharge of his trust.

It is further ordered, that said defendant, the Chicago Life Insurance Company, its officers, agents, attorneys, and servants, be, and they are hereby, enjoined and restrained, until the further order of the court, from further proceeding with their said business, and from making any transfer or disposition of their property other than to said receiver as aforesaid, and from receiving or paying out any

moneys, and that neither said receiver nor said defendant, its officers, agents, servants, and attorneys, shall exact or take from
14 its policy-holders any sum or sums of money to accrue from premiums on policies beyond what may be justly due or payable on or as of the 7th day of July, A. D. 1877.

Filed July 7, 1877.

Summons to August term issued July 10th, 1877; served same day, and filed the day following.

Answer to Insurance Company.

STATE OF ILLINOIS, }
County of Cook, } ss:

In the Circuit Court for said County. In Chancery.

T. B. NEEDLES, Auditor of Public Accounts for the State of Illinois,

vs.

CHICAGO LIFE INSURANCE COMPANY.

Petition for receiver and injunction to wind up the affairs of said company.

The answer of the said Chicago Life Insurance Company to the petition aforesaid.

These respondents, saving all exceptions that may be had or taken to the manifold errors and insufficiencies of said petition, nevertheless for answer thereto, or to so much or such parts thereof as is or are material to be answered unto, answering, say:

I.

That they admit that said auditor has recently caused an examination to be made of the affairs of said company by Robert M. Wood, his examiner in that behalf, in substance as is stated in said petition.

And these respondents, further answering, admit that the said John W. Clapp, who is named in said petition, was the secretary and manager of said company, and had been such secretary
15 and manager for many years past, and that the said John W. Clapp has recently disappeared and gone to parts unknown to these respondents, leaving the business of said company in some confusion.

But whether said company, under the management of said Clapp, has for some years last past been doing a losing business, and whether there is a large deficiency of the securities of said company, and whether said company is insolvent, as is in substance alleged in said petition, these respondents do not know except as they are informed by the report of said examiner, and therefore cannot otherwise either admit or deny the same; but to protect all the rights and interests that may be involved, these respondents deny the truth of the charges aforesaid, and each of them, and put the

said auditor to strict truth thereof, to the end that whatever action may be had or taken upon the affairs of said company under the petition of said auditor, may be based upon the judgment of this honorable court, upon the facts of the case duly established by lawful evidence, and not upon any confession or consent of these respondents.

II.

And these respondents, further answering, say that as soon as they learned the result of the examination aforesaid, they promptly entered upon certain efforts and proceedings to adjust the affairs of said company in such a manner as to secure the largest benefits to all parties in interest, whether creditors, debtors, or stockholders of said company, and endeavored to procure from said auditor a sufficient delay to enable said company to carry some such plan into full effect; but said auditor, although the efforts and plans of these respondents were in general approved by said examiner and by others whose good judgment was taken in that behalf, doubted, as he was advised, whether under the statute, in such case made and provided, he could lawfully grant the indulgence which was desired by these respondents for the purposes aforesaid, and thereupon proceeded to file his said petition, and committed the matter to the charge and judgment of this honorable court.

16 And these respondents believe that the plan for the voluntary settlement of the affairs of said company, which was pending at the time of the filing of said petition, can still be carried out, with the approval of this honorable court, to the great advantage of all parties in interest; and these respondents will file herein their petition to obtain the leave of the court to proceed with the negotiation of said plan, and to carry the same into full effect, when it shall have been perfected, and shall have received the approval of this honorable court.

III.

And these respondents, further answering, say that, as soon as the result of the examination aforesaid was known, they at *at* once stopped the business of insurance in which they were engaged, and put in safe custody all the assets and securities of said company, so that there was no necessity, from anything either done or threatened by these respondents, for the appointment of a receiver or the granting an injunction, as prayed for by said auditor in his said petition; and these respondents insist that the order appointing said receiver and granting such injunction ought to be so modified as to allow the said company, under the direction of this honorable court, to endeavor to wind up its own affairs in conformity with law, to save the losses and expenses of a forced conversion of its assets into money, exclusively by the hands of those hitherto wholly unacquainted with its affairs, as will be more fully shown and set forth in the petition to be filed by these respondents as aforesaid.

And now, having fully answered, these respondents pray that such

proceedings may be had in the premises as justice and the law of the land may require, &c.

CHICAGO LIFE INSURANCE COMPANY,
By C. C. BONNEY,
Their Solicitor and Counsel.

Filed July 20, 1877.

17 STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court of Cook County. In Chancery.

THOMAS B. NEEDLES, Auditor, etc.,
vs.
CHICAGO LIFE INSURANCE COMPANY.

The Replication of said Auditor, Petitioner, to the Answer of said Company.

This repliant, saving and reserving to himself now, and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer of the said defendant, for replication thereunto says: That he will aver, maintain, and prove his petition of complaint to be true, certain, and sufficient in the law, to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant without this; that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays, as in and by his said petition he has already prayed.

E. B. SHERMAN,
Solicitor for Petitioner.

Filed April 18, 1881.

And thereupon, to wit, on the 2nd day of July, A. D. 1881, a certain certificate of evidence was filed in said cause, and is in the words and figures following; to wit:

18 *Certificate of Evidence.*

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court for said County. In Chancery.

THOMAS B. NEEDLES, Auditor of Public Accounts for the State of Illinois,
vs.
THE CHICAGO LIFE INSURANCE COMPANY.

For Injunction & Receiver to close up said Company.

I, the undersigned, Murray F. Tuley, one of the judges of said

circuit court, do hereby certify that the above-entitled cause was heard by and before me, sitting in chancery, at the April term, A. D. 1881, of said court, upon the bill or petition of said auditor, and the answer of said company thereto, and the replication of said auditor to said answer, and the evidence offered by the respective parties, said cause having been dismissed before said hearing as to various stockholders who had previously been made parties thereto.

And I do hereby further certify that the following is all the evidence upon which said cause was heard and decided as aforesaid.

It was stipulated upon the hearing of the cause that in
19 writing out the evidence only such parts of the records of the company, and lengthy reports that had been introduced, shall be inserted, as will show the results, and necessarily accompanying facts, unless otherwise specially directed by counsel.

ROBERT M. WOODS, being first duly sworn, testified in behalf of the complainant as follows, in answer to interrogatories propounded by E. B. SHERMAN:

Q. Where do you reside?

A. At Joliet, Illinois.

Q. What was your business or employment in the years 1877, in the months of May, June, and July?

A. I was chief clerk of the insurance department of the State auditor's office of this State.

Q. You may state whether, as the chief clerk of the insurance department, you were directed by the auditor to make any examination in connection with the Chicago Life Insurance Company.

A. I was directed to make that examination.

Q. Do you recollect about when?

A. It was in the month of May, 1877.

Q. Was that direction verbal or was it written?

A. It was written.

Q. Please look at the paper now shown you and state what it is.

20 A. That was the instruction given me by the auditor to make the examination.

(The paper referred to was here introduced in evidence by complainant's counsel and marked Exhibit A.)

Q. How soon after this authority was issued did you commence the examination of that company?

A. I think within a day or two. I think that was given me at Springfield, and I came within a day or two to Chicago and made the examination.

Q. How long did that examination last?

A. I think a couple of weeks.

Q. Did you make any report to the auditor of such examination?

A. I made a written report.

Q. Please look at the paper now shown you, and state what it is.

(The paper shown witness is the report of the examiner, Robert

M. Woods, to the auditor, and is mentioned as "Exhibit A" to the original petition, and filed therewith.)

A. That is a copy of the written report.
Q. Which you made to the auditor?
A. Yes, sir.
Q. Who is that copy made by?
A. I made it.
Q. Is it a duplicate of the original?
A. It is.
Q. Will you please state to the court in your own way what course you pursued in making the examination of the defendant in
21 this case, and what results you arrived at?

A. I appeared at the office of the company, it must have been in June by the date of this report, and asked for complete schedules of all their property owned, mortgages and deeds, and for access to their books in order to make a valuation of the policy liability, and proceeded for several days in examining the company.

Q. State in general the course you pursued, and what books you consulted, and what results you arrived at.

A. I examined all the books that had the records of their securities, and I called for the securities themselves, and proceeded to trace the securities through the cash-book, and find out whether the company really owned them, and whether they paid for them. When the secretary of the company found out what I was at he asked me very particularly how I was going to do it, and I showed him how I would trace them through to find out whether they really owned them, and he disappeared. He did not come to the office any more. I don't know where he went to. The president of the company then, and the other officers, I think, requested me to take charge of the office, everything there was in it, and the clerks. So that I took charge of it, and made an investigation to find out what property they had, and the condition of the company, and
22 made a report to them. Afterwards I proceeded with the regular investigation of the company, examined all the assets that they had, all that appeared on their books, and found out that there was other assets that did not appear on the books that they claimed belonged to the company, made a valuation, or had a valuation made of all the property, and then made my statement showing the total value of all the property owned by the company, and the total liability. That showed the company to be insolvent. The investigation of the manner of doing business showed that they were not conducting it as required by the laws of the State, or in a manner that would be safe to the policy-owner.

(Objected to by counsel for defendant, on the ground that the witness is stating conclusions.)

The WITNESS: I reported as a fact to the auditor that the business was not done in a manner that was safe to the policy-holders.

Q. You reported that as your judgment, your conclusions from your examination?

A. Yes, sir; and recommended that the company be wound up.

Q. In the first part of your report you say: "I find that the company has been doing a losing business for several years. Its income has been small and constantly decreasing, yet its salaries, office expenses have been large, and it has made large annual dividends to its stockholders which were unwarranted by the condition of the company." Will you explain somewhat more in detail what you mean by this statement?

23

A. I mean that the accounts showed that the company was doing a loosing business, that they were not making anything, and in the face of that fact they declared dividends to the stockholders; these were regular dividends to policy-holders, of course; I took no account of a——

Q. That was a fact, as shown by their books?

A. Yes, sir.

Q. The interest on its securities is largely in arrears, and no interest appears to have been collected on its securities upon which the capital stock is based, thus depriving the company of its needed revenue. Where did you obtain your information upon which you predicated that statement?

A. Perhaps I ought to state that many of those dividends appear to have been made from the interest—that is, that the interest was not paid in, but the parties were credited with the interest and the same amount charged back to them as dividends, so that no money passed in the transaction.

Q. Was the stock paid for in cash, or was it paid for at all?

24

A. I don't remember that any of it was paid for in cash; it was paid by deposit securities.

Q. What kind of securities were those in general which were so deposited?

A. They were trust deeds and mortgages.

Q. What kind of memoranda or notes did the stockholders give to the company in payment for their stock?

A. I don't remember the wording of any securities. From what I saw there was a note, or ought to have been a note, with each security.

Q. Do you recollect what kind of notes they were; were they time notes or demand notes?

A. I don't recollect.

Q. The next section of your report makes a statement in regard to what are called the Clapp and Barry securities, and says these parties, Mr. Secretary Clapp and Mr. J. K. Barry, purchase dsecurities, and from time to time, when the company had money to pay for them, would turn them over to the company. In like manner, the syndicate loaned money, presumably from their own private funds, but the notes, trust deeds, &c., were taken in the name of the company, and as fast as the company had money to pay, the securities were turned over to the company. Will you please state to the court this transaction, as you developed it, between Mr. Clapp and Mr. Barry?

25

A. When I proceeded to trace the assets through the cash, I

came across certain trust deeds or mortgages that did not appear on the books of the company, and yet were contained in their schedules. I could not find where they had been paid for. These were made in the name of the company; they appeared to belong to the company, but there was no evidence on the books that the company had bought or paid for them. I found on investigation that they were claimed as joint property of Mr. J. K. Barry and Mr. Clapp, who was the secretary of the company.

Q. Do you recollect something near the amount of those?

A. I think there was about $60,000.00.

Q. The exact figures that you reported is $64,000.00?

A. There is a schedule in the report, connected with the report, showing the exact amount. It is not part of this, but it was filed in the auditor's office.

The COURT: You say it appears on the schedule. What schedule?

A. The schedule submitted to me as examiner. I asked them what property they had, and they made me schedules of it, and I wanted to find out where they got them, to see whether they had been loaned to them by outside parties, but I could not find where
26 they had bought them or paid for them.

Q. The officers of the company presented to you what they claimed to be the assets of the company?

A. Yes, sir.

Q. On tracing these assets through the cash you found the discrepancies that you have already named of about $64,000.00?

A. Yes, sir.

Q. State if you found any other securities there which did not appear on the cash.

A. I found security there for $15,000.00.

Q. Apparently running to the company?

A. Running to the company: W. F. Tucker. And there was no evidence that it had ever been paid for.

Q. This was outside of the Barry and Clapp securities entirely?

A. Yes, sir; I don't know that they were presented to me by the officers of the company as being their *bona fide* property.

Q. Was not it presented by the secretary of the company as being part of the assets of the company?

A. Yes, sir.

Q. Had not it been included in the sworn reports made to the department before as part of the assets of the company?

A. Yes, sir; since 1872.

Q. Were there any other securities which you did not find on tracing through the cash; do you recollect anything in regard
27 to some property which was afterwards claimed by a Mr. George B. Clapp, of Boston?

A. Either eight or ten thousand dollars.

Q. Was that also presented to you as part of the assets of the company?

A. I think it was.

Q. That was done by the secretary also, was it not?

A. I think it was decided that it was not the property of the company.

Q. Had that $8,000.00 been scheduled as part of the assets of the company previously?

A. I am not sure about that; I don't think it had been. I took possession of everything in the shape of security or note that I could find about the office; I mean I was given possession of it by the officers of the company after Mr. Clapp had gone away.

Q. What I desired to ascertain was simply this: Did Mr. Clapp present this to you as part of the assets of the company?

A. Yes, sir; it was with the balance of the assets.

Q. Did it appear on the schedule or was it given you as part of the assets?

A. I don't remember; I don't remember that; I can only tell by the schedule itself.

Mr. BONNEY: The George B. Clapp security stood in the name of the company, did it not?

A. I don't remember that; I don't think it did; I think
28 there were two other notes belonged to Mr. Clapp.

It is admitted by the parties to this suit that the George B. Clapp security, the $10,000.00 spoken of by the witness, was payable to the order of the makers, and was endorsed in blank, and so found among the assets of the company, and so presented to the examiner by the then secretary as a part of the assets of the company, and it was afterwards determined by this court to be in fact the property of said George B. Clapp.

Mr. SHERMAN: That was the result at which you arrived in your examination as to the status of the company?

A. I decided that the company was insolvent.

Q. Upon what did you found that opinion?

A. From the fact that its liabilities exceeded its assets to the amount of $148,178.58.

Q. On what basis was the present value of the policies estimated to obtain those results?

A. On the basis prosecuted by the laws of this State; what is called the four per cent. basis.

Mr. BONNEY: As stated in your report?

A. I think so. The report states two calculations: One on the basis of four per cent., one on the basis of six per cent. I had them both made. It was thought at the time that if they were solvent on
a basis of six per cent., they could go through. On a basis
29 of six per cent. their capital was impaired to the amount of $75,285.58.

Mr. SHERMAN: Did you examine the last annual report of the company made December 31st, 1876, in connection with this examination of their affairs?

A. Yes, sir.

Q. Was that report, as made to the department, a sworn report, true?

A. I believe we decided it was not true.

Q. What is the paper now handed you?

A. This is the original report made the 31st of December, 1876, and filed in the auditor's office March 12th, 1877.

Q. Report of what?

A. Report of the condition of the Chicago Life Insurance Company.

Q. Made by whom?

A. Made by the officers of the company.

Q. Signed and sworn to by whom?

A. By William F. Tucker, president, and John W. Clapp, secretary.

Q. And before whom as an officer?

A. Before Phillip A. Hoyne, a notary public of Cook county, Illinois.

(The report referred to above was here introduced in evidence by the complainant, and marked "Exhibit B."

Q. State whether that report was true or false.

A. I did not state anything of that kind in my report.

Objected to.

I think we found the report to be incorrect.

30 Q. In what respects did you find the report incorrect?

A. The schedules contained a large amount of securities which did not belong to the company.

Q. On the amount of securities, or what securities?

A. On the Clapp and Barry securities.

Q. Anything else?

A. These other securities that were on the report are not on the books of the company.

Q. Please examine and see if you find Mr. Tucker's security footed in that list.

A. Yes, sir; that security is on this schedule—$15,000.00.

Cross-examination by Mr. BONNEY:

Q. You say that you spent about two weeks making this examination?

A. I should think it was about that time.

Q. State whether you had any assistant.

A. I was assisted by the actuary of the department of Illinois.

Q. Give his name.

A. His name was Kellogg.

Q. State whether he was an expert accountant.

A. He was an expert accountant.

Q. Was he engaged with you during the two weeks that you were making this examination?

A. He was.

Q. State whether his assistance was necessary to you.

A. It was necessary.

Q. State whether you had made any previous examination
31 of the affairs of this company?

A. I had not.

Q. Have you knowledge of what previous examination had been made by the auditor under his direction?

A. Yes, sir; they were made by Mr. Kellogg several years before his reports were on file in the auditor's office.

Q. Did you make any examination of Mr. Kellogg's reports for the previous years, either before or after your examination?

A. I had examined them before.

Q. Do you know whether there was any specific cause for directing the examination to be made by you and Mr. Kellogg instead of entrusting it to him, as on previous years?

A. I don't know of any specific cause; no, sir.

Q. You mean the more extended examination happened in the usual course of the auditor's office, without special reason, so far as you know?

A. Yes, sir.

Q. No charge was made to the auditor's office, nor were these public rumors affecting the solvency or standing of the company?

A. There were no charges made; there were rumors made in regard to the solvency of the company.

Q. Do you know from what source?

A. I heard they were among insurance men.

32 Q. State whether they were not generally credited to spring from rival companies.

A. I think they were credited to spring from rival companies.

Q. So that up to the time of your examination there was nothing really impeaching the good standing of the company, so far as you know?

A. Not so far as I knew.

Q. State whether, in the course of your examination, you found anything irregular in the accounts of any officer of the company other than the secretary, Mr. Clapp?

A. I think I found nothing irregular; I mean I think the accounts were all plainly shown on the books.

Q. State whether, in the course of your examination, you found any act of the other officers of the company or members of the board of directors that did not appear to have been made or done in good faith?

A. I think I found no acts.

Q. It is true, is it not, that you stated to the other officers or directors that you found nothing in the course of your examination apparently against their good faith?

A. I think I so stated; yes, sir.

Q. State whether you discovered any evidence, and, if so, what, to show that any other officer or director of the company than Mr. Clapp had any knowledge of the alleged deficiency of assets prior to your information.

33 A. I found no evidence that they had any knowledge of it whatever.

Q. On the contrary, you found a good deal of evidence that satisfied you that they really knew nothing of it, or suspected anything of it until you gave them the information?

A. I found that they had examined these same securities.

Q. You speak now of the Clapp and Barry securities, to the amount of $64,000.00?

A. Yes, sir.

Q. The legal title to these securities was in the company, was it not?

A. It appeared to be.

And as the examination disclosed afterwards, it was claimed that these was an equitable title in Clapp and Barry, particularly in Barry, because the securities had not been paid for?

A. Yes, sir.

Q. This security of George B. Clapp being endorsed in blank, appeared also to be the property of the company, did it not?

A. It did.

Q. The securities, the $64,000 of the Clapp and Barry, so called, the $15,000.00 mortgage of Mr. Tucker, the $10,000 of George B. Clapp, being with the other assets of the company, were so that if an examining committee undertook to examine the securities of the company, they would find all these and treat them as prop-
34 erty of the company, would they not?

A. Yes, sir. There was evidence that they had been examined by the examining committee of the company.

Q. You learned in the course of your examination that they had been so examined?

A. I learned that they had been, and found the check marks of the examination.

Q. Had you, then, any reason to doubt that the examining committee of the company believed that those securities were the property of the company when they examined them and checked them off?

A. I have no reason to doubt that.

Q. You so state in your report, do you not?

A. I think so.

Q. The securities of the company were deposited with the auditor of the public accounts, were they not?

A. A part of them.

Q. That is the securities that were treated as the guarantee capital?

A. Yes, sir.

Q. State whether the parties by whom those securities were given collected the interest on them, from time to time, as the interest accrued.

A. I don't remember.

Q. Was it not the ruling and practice of the auditor's office, under the first section of the life insurance act, speaking of the
35 "guarantee capital," to allow parties depositing securities, thus to receive and collect the interest from year to year?

A. That was the way they did in the auditor's office.

Q. That was the practice and usage in the auditor's office?

A. It was.

Q. And, indeed, the parties could not have collected the interest without the concurrence and consent of the auditor as to the securities deposited with him, could they?

A. I suppose not.

Q. What were the matured liabilities of the company at the time of your examination; I mean what sums of money were then due and payable?

A. I think there were one, two, three, or four dead losses.

Q. Amounting to?

A. Not over ten or fifteen thousand dollars.

Q. About $8,400, as stated?

A. Yes, sir.

Q. Then, when you speak of the liabilities exceeding the assets, you mean that on the theory that the company was to be wound up, and all its contingent liabilities on its policies matured at the time of making your report, its liabilities would exceed the assets?

A. Yes, sir.

Q. You did not mean to say that the company actually
36 owed at the time of your examination more than this $8,400?

A. I did not.

Q. Please state whether, immediately after your examination and while you were in conference with the officers and directors of the company other than Mr. Clapp, the secretary, they furnished you apparently all the assistance in their power in the course of your examination.

A. They did.

Q. State whether they appeared to exert themselves actively to see that you had for examination everything that belonged to the company.

A. They appeared to exert themselves.

Q. State whether you know of an attempt on the part of Mr. Barry to take away this $64,000 of securities before the matter had been submitted to the court, and whether it was resisted, and by whom, if at all.

A. There was an attempt of that kind made, and it was resisted by the president of the company, Mr. W. F. Tucker.

Q. The securities were held by him and submitted to your care?

A. Yes, sir.

Q. State whether the president and directors asked at your hands, or of the auditor through you, any delay in filing the auditor's petition to give them an opportunity to see what they would do.
37 A. I have no recollection of any delay being asked.

Q. State whether there was not an offer made to you to reinsure all the outstanding risks of the company for a term of 30 or 60 days, within which some further steps should be taken in regard to the company.

A. Those were propositions made to reinsure by one or two companies.

Q. Wasn't there a proposition made on behalf of the directors, es-

pecially by Mr. Currier, to you to reinsure all the risks in some good company for a short period—30 or 60 days—within which the condition of the company should be settled and the future course be determined upon?

A. I don't remember that. I remember that there was two offers made to reinsure all the risks of the company; whether it was for only a period of 30 days to ascertain the condition of the company or not, I don't know. I don't think that it was.

Q. Your recollection is that the offers were to reinsure all the risks in some company satisfactory to you?

A. Yes, sir.

Q. That matter was talked about considerably?

A. It was talked about considerable. Parties came there and examined the books and examined the policies.

Q. State whether that application was refused.

38 A. I will not state that it was not refused. It was not entered into. Whether those who applied decided not to reinsure, or whether the company decided not to permit them to, I don't know. I merely remember that they were not reinsured.

Q. Refresh your recollection a little and state if, when that matter was under consideration, you did not communicate with the auditor, and on receiving word from him refuse to allow time to effect the proposed reinsurance.

A. I don't remember that.

Q. I will ask you to think up the matter a little and say whether you did not personally express yourself to the directors as being favorable to the proposed reinsurance, but say you felt you could not do that on your own personal responsibility, but would communicate with the auditor; and if you could obtain his consent, would cheerfully do it; and, having communicated with him within a day or two, whether you did not then say to the directors that the auditor had declined to give time to perfect the proposed reinsurance, and you determined to apply to the court immediately.

A. My recollection of that matter is, that if I communicated with the auditor with regard to the reinsuring those risks, it was

39 on a proposition made by some other company to do what we call twist the policies, not for the company to reinsure all of its risks at once, but to give another company the privilege of coming in and issuing new policies of its own to each individual policy-holder on such terms as they could make with the policy-holders themselves, and to take their pay out of such assets as they might choose of the company. I think there was a proposition of that kind made, and I think it was refused either by myself or after communication with the auditor. I don't remember writing any letter to the auditor and making the proposition that the company would reinsure all of its risks.

Q. You say that the report for the year 1876 was not in all respects correct. You have detailed the respects in which it was was not correct, have you not?

A. I believe so. I have not made a full examination of it.

Q. Please state who made the valuation of the assets in connection to your examination.

A. Those assets on property outside of the immediate neighborhood of Chicago, the valuation was made by writing letters, I believe, to bankers and real estate men in the neighborhood where the property was located. I think I remember some in Iowa. Letters were placed on file with the report. The valuation at and about Chicago were made by George M. Boque. He is now receiver of the company.

Q. State whether those valuations were made under oath.

A. It was not the custom to have them under oath.

Q. These were not so made?

A. I think not.

Q. This examination was made in 1877?

A. Yes, sir.

Q. State whether there had not been a steady decline of real estate securities from the panic of 1873 down to and including the year 1877.

A. I think there had.

Q. So that in that year real estate securities probably reached their lowest point after the panic, did they not?

A. They were low at that time; real estate securities were very low in 1877.

Q. Is it not true that taking the securities at what they were probably worth when they were received by the company, they would have been ample?

(Objected to.)

The COURT: If he knows he may state.

A. I only know from the reports.

Mr. BONNEY: State whether you discovered any evidence to show that the securities of the company were not of full and adequate value at the times when they were respectively taken.

A. No, sir; there was no evidence of that kind.

Q. You estimated the impairment of the capital on the American or commercial basis in your report at a little over $75,000?

A. Yes, sir.

Q. Is it not true that if the Clapp and Barry and the George B. Clapp and William F. Tucker securities had been treated as legally the property of the company, and the deficiency in value of the securities which you stated in your report, amounting nearly to $13,000, had been omitted, there would have been a considerable surplus on the American basis at the time of your examination?

A. There would have been a surplus on the six per cent. basis, a very small amount.

Redirect examination by Mr. SHERMAN:

Q. Do you recollect how long before your examination, in June, 1877, it had been since an examination had been made by the department?

A. I think there were annual examinations made.

Q. Under what auditor were previous examinations made?

A. Under Auditor Lippincott.

Q. You examined by the direction of the auditor?

A. Yes, sir.

Q. Came into office at what time?

42 A. On the 9th of January, 1877.

Q. Then was when Mr. Needles took possession of the department?

A. Yes, sir.

Q. You say you discovered no evidence that any other officer save Mr. Clapp, the secretary, had any knowledge of the irregularity in regard to this matter of securities; is it not a fact that any officer of the company might, in a very short time, have known all about it that you know, if he had taken the pains to find out?

A. If the examining committee of the company had traced securities through the cash-book to find out where they came from, they must have found out.

Q. In other words, the books themselves showed, did they not, the actual facts which you developed, and which they claimed to be ignorant of?

A. The books failed to show that these securities had been paid for by the company.

Q. How long would it have taken a business man with some knowledge of practical book-keeping to have discovered that fact?

A. I found it out very quickly, but I don't know how long I was getting to that point.

Q. With a list of these securities furnished you by Mr. Clapp you first checked off all those securities, did you, to see whether they were there?

43 A. Yes, sir.

Q. With the papers which they produced?

A. Yes, sir.

Q. That, you think, had been done by the committee or the creditors before?

A. It appeared to have been done.

Q. When you came to the point of tracing those securities through the cash-book, how long did it take you to discover that fact that there was something crooked there?

A. It would only take time enough to look through a dozen or two pages of the cash-book at or about the date of the security, if the mortgage was given, to show whether the money had been paid.

Q. Would that take a week or a day?

A. It would probably take a few hours.

Q. Is it not a fact, then, that this board of directors, or the officers of this company, by spending a single day, could have discovered the irregularities in the respects which you have named?

A. I think they would have found some of them; I think the disappearance of Mr. Clapp, however, called my attention more

particularly to it, because he asked me so particularly how I was going to work the next morning.

Q. But you would not have discovered the same state of facts if Mr. Clapp had not run away?

A. Yes, sir; I would have discovered them.

44 Q. Is there anything about the method in which you discovered it that any good intelligent business man would not have adopted if he had really and thoroughly desired to ascertain the facts?

A. It is the one I naturally adopted. I don't know how they would go at it.

Q. You adopted the proper method to find out?

A. I considered it the proper method.

Q. You told Mr. Clapp what you were going to do?

A. Yes; I explained the *modus operandi*.

Q. He left the same night?

A. He was not there the next morning.

Q. You think this was a method that any one could have adopted if they had really and earnestly desired to ascertain the entire facts in the case?

A. It is a method employed by examiners.

The COURT: Was it the usual method that any examiner would adopt?

A. No; it was a more rigid and thorough method than had generally been adopted, although I have known it to be done in the examination of a number of life insurance companies.

Mr. SHERMAN: Was it the method you adopted in examining the other companies here?

A. Yes, sir.

Q. Is it not the method adopted by the department of Wisconsin and Michigan and other States?

45 A. It was adopted by five different States in the examination of the Life Insurance Company at St. Louis, in which all participated.

Q. There is nothing mysterious about the manner?

A. It is the usual method.

Q. In ascertaining this you take the security which the company apparently own, and ascertain the date when it was acquired, do you not?

A. Yes, sir?

Q. You go to the cash-book, then, to see if that shows a transaction corresponding to it, do you not?

A. Yes, sir.

Q. That is all there is of the matter?

A. That is about the extent of it.

Q. The cash-book of the company itself contained all the information necessary for an examination to show these facts?

A. We sometimes go further. In addition to the cash-book we get a check for that loan of $5,000 on a piece of property, we find the check and what bank it was taken out of.

Q. In this case the cash-book itself gave you the information, did it?

A. Yes, sir.

Q. You were asked on cross-examination in regard to the withdrawing of the interest upon securities deposited with the State
46 treasurer, at Springfield. Do you mean to be understood that these were drawn, that this interest was taken by the stockholders directly, or was it simply drawn through the company by the secretary, or do you recollect; that is, were the stockholders allowed to go and take this interest, or did the company itself obtain the interest?

A. The transactions I suppose would be made through the company.

Q. As a matter of fact, they were so made, were they not?

A. I suppose so.

Q. You were asked whether any resistance was made to Mr. Barry's taking away these securities, and stated that the president made resistance, what was your own position on that?

A. It was that of the president in regard to taking away any securities or any property whatever.

Q. Did you not distinctly refuse to allow Mr. Barry or anybody else to take anything whatever from the securities or from the office after you commenced your examination?

A. I did, sir.

Q. Did you have any authority from the auditor to permit any re-insurance plans or to favor any such plan?

A. I don't remember any such.

Q. You pointed out some incorrect statements in the report made by the company to the auditor the 31st of December, 1876;
47 may or may there not be other misstatements or incorrect statements in that to which you have not alluded?

(Objected to.)

Q. Do you know as to whether the statements of revenues and expenditures were or were not correct?

A. The report gives a certain amount of interest paid in and corresponding amounts paid out to the stockholders of the institution, and the examination of the company shows that those were not paid in cash nor paid out in cash, but credited and charged up.

Q. It is incorrect in that particular?

A. It is incorrect in that particular; yes, sir. That ought to be not that specific amount of interest, but that certain interest was paid in, and afterwards paid out.

The COURT: You say you obtained your information as to the value of your securities outside of Chicago on letters written?

A. To bankers and real estate agents, yes, sir.

Q. From the Chicago assets by Mr. Bogue?

A. Yes, sir.

Q. You adopted these valuations from the information thus obtained?

A. I did, sir.

Mr. BONNEY: I understand that the interest and dividends
48 of which you have spoken about as appearing in the report were not carried into the cash, never not in fact cash transactions, and did not appear in the cash-book?

A. I think they appear in this report. For instance, here is $18,000, cash received for interest on bonds, notes, and different securities of the company. This was not all paid in in cash.

Q. Those items, I understand you, were not in the cash-book, not being cash transactions?

A. I don't recollect as to that, whether they appeared in the cash-book or not. I did not trace these individual amounts to the cash-book, or to make up this account of cash paid in, but I found, in general, that it had been the custom in the company to credit the interest, and then charge it up.

Q. That would be all right if the company were in good condition?

A. Yes, sir.

Q. State whether any person, not an expert accountant, would be qualified to be appointed by the auditor to examine the affairs of an insurance company.

A. He would have to be an accountant. I do not know what an expert accountant is, but he would certainly have to be an accountant, or he could not transact the business.

Q. He would have to be a good accountant?

49 A. I should think so.

Q. What reason can you give for the fact that the prior examinations by Mr. Kellogg, who is an expert accountant, and who assisted you in making this examination in the previous years, discovered no deficiency in the assets?

A. It has not always been customary to make as rigid examinations as were made during that year and the year following.

Q. Is it not true that prior to the examination made by you it was not the custom of insurance examiners to trace the assets through the cash-book, as you did on that occasion?

A. I don't know whether it was or not. That part I don't know.

Q. You did not learn what had been the previous course in the auditor's office?

A. No, sir; I did not.

Q. You say to determine whether any securities could be followed into the cash would only require looking through a dozen or two pages of the cash-book at or about the time of its date.

A. That is usually sufficient in ordinary book-keeping. That would be the course. If money had been paid out for a security it would be put on the cash-book when it was paid out.

50 Q. Suppose a security were made, and the money not actually loaned upon it until some weeks, or, perhaps, some months after this date, that would increase the difficulty, would it not?

A. The custom would be to ask the man who keeps the books to show you the entry when that cash was paid out.

Q. And the man whom you would have asked to show you that suddenly disappeared.

A. Yes, sir; he disappeared.

Q. If Mr. Clapp had remained there instead of disappearing your suspicions would not have been excited as they were?

A. They would not have been excited.

Q. Did you not make a more thorough and critical examination after your suspicions were excited by that fact than you would naturally have made without it?

A. Not on the point of whether a security had been paid for or not.

Q. How many securities did this company hold at the time of your examination?

A. 25 or 30, I mean of these mortgages; trust deeds, probably all told, 100.

Mr. SHERMAN: You mean 25 or 30 of these irregular securities?

A. Yes, sir; all told there was more than 100. I could tell by referring to the schedule. I do not think much more than 100, though, all told.

Mr. BONNEY: Can you state that, in your judgment, the di-
51 rectors and officers of the company other than Mr. Clapp were guilty of any gross neglect or default of duty in not finding out what you discovered in your examination?

(Objected to.)

A. I don't know the custom of boards of directors.

Q. Did you claim or allege to these gentlemen at the close of your examination that they, or any of them, had been guilty of any such neglect in not discovering what you found out?

A. No, sir; I did not. It was what we might call a natural mistake—a natural oversight.

Mr. SHERMAN: That is, you mean, that these parties who examine accepted what the department had sometimes done, the sworn statement of the officers of the company?

A. I mean that they believed that the secretary had kept the accounts correctly. They did it partly on the faith of the secretary and partly by examining the securities themselves. They looked all right upon their face.

Mr. BONNEY: And partly on the fact that the auditor examined them.

A. I should think so.

Q. That was said in the course of your examination; when you talked with these gentlemen they gave you those reasons that
52 you have named, and also the examination by the auditor.

A. I think they mentioned both of those reasons.

Mr. SHERMAN: If at any previous examination the department had failed to discover these, must it not have resulted from the fact that it accepted what you refused to accept—the statements of the

officers and the sworn statements made to the auditors as to their assets?

A. It is customary to accept the sworn statements of the officers as true, and also the footings of their books.

Q. The sworn reports to the auditor had shown these assets, the Clapp and Barry and Tucker securities, to be assets of the company, had they not?

A. They had; yes, sir.

Q. So that the department failed to go into the cash-book as you did previously; they simply accepted the sworn statements of the officers of this company.

A. I suppose so; it is customary to go further than that and accept the footings of the clerks in these books. There are a great many large books connected with an insurance company, and to verify everything would require a very long examination. An examiner would have to spend all his time there in order to keep track of a large business of that kind.

53 Mr. BONNEY: Please state the length of time it would require you and Mr. Kellogg to make complete examinations for yourselves of all the accounts of that company?

A. We would have been compelled to commence pretty soon after the company did.

Q. And kept account all the time?

A. Yes, sir.

DUNCAN CAMPBELL, being first duly sworn, testified in behalf of the complainant, as follows, in answer to the interrogatories propounded by E. C. Sherman:

Q. What is your business at present?

A. Accountant.

Q. Where do you reside?

A. In Chicago.

Q. What experience have you had as accountant?

A. I have had a very large and varied experience as accountant.

Q. Please state in brief what experience you have had?

A. I have kept the books of various firms; I have kept my own books; I have made investigations into bankruptcy concerns and into fraudulent concerns.

Q. How long have you been engaged in making investigations into concerns, of banks and other institutions of like character?

A. My first experience was in 1851; it has been almost continuous.

Q. From that time to this?

54 A. Yes, sir.

Q. What is your present employment?

A. Book-keeper.

Q. For whom?

A. For receiver of the Chicago Life Insurance Company.

Q. As such book-keeper have you made such examination of the affairs of that company?

A. I have.

Q. Have you made an examination in reference to the receipts and disbursements of the company; and, if so, for what time?

A. I have made an examination of the receipts and disbursements of the company for the years '71, '72, '73, '74, '75, and 1876.

Q. From what did you make that examination?

A. From the books of the company.

Q. Have you also examined the sworn reports made to the department for those several years by the officers of the company?

A. I have.

Q. Please look at the paper shown you, and state what it is. (Handing witness paper.)

A. That is a private statement of the receipts and disbursements of the company, as shown by the books of the company, and as shown by the sworn statements of the officers of the company for the period I have named.

Q. And what else?

A. It shows a discrepancy between these returns.

55 Q. Does this statement, which you have just referred to, show in separate columns the receipts?

A. It does.

Q. From the years '71 to '76, inclusive?

A. Yes, sir.

The complainant introduced the paper referred to in evidence, and marked "Exhibit C."

Q. Have you made an examination as to the amount of dividends made by the company during the same time?

A. I have, sir.

Q. Have you made any statement showing those facts?

A. I have sir.

Q. Look at the paper now shown you, and state what it is. (Handing witness paper.)

A. This is a statement showing the amount paid to each of the stockholders from time to time as dividends upon the stock.

Q. From what time to what time?

A. Commencing the first payment in August, 1871, and extending on to February, 1877.

Q. State a little more fully what the paper, now before you, shows.

A. This is a synopsis of the stock dividends paid to the individual stockholders upon the holdings in the company.

Q. During the time you have already specified?

56 A. Yes, sir; the names of the parties are set forth *seriatum*, and the dates with the amounts paid each individuals of the given date set forth. The total is shown to be $55,045 as having been paid by the company by the stockholders.

The paper referred to was here introduced in evidence and marked "Exhibit D."

Q. Have you examined the books of the defendant with a view of determining whether the company was solvent or insolvent?

A. Yes, sir.

Q. State what the condition of the company was as shown by its books when it passed into the hands of the receiver.

A. I balanced the books at the close of the company's business, and found, taking the assets and liabilities into account, that it was in a state of insolvency.

(Objected to.)

The COURT: Let us have the figures.

A. I found, as the result of the work, that there was a total of surplus profit of $117,806.09, as the result of the company's operation from its starting point to the time it passed into the hands of the receiver; that by the director's report there was a liability on policy on the 31st of December, 1876, of $264,155, with an additional liability on account of death claims of $6,000, making
57 an aggregate of $270,155 upon policies admitted, against which the surplus revenue of the company was presented to be $117,806.09.

Recess until 2 o'clock.

Cross-examination by Mr. BONNEY:

Q. How much time did you spend in examining the accounts of the company to make up your statement of the receipts and disbursements?

A. I think, from first to last, certainly over a month.

Q. State whether you made that examination with or without any special direction.

A. The directions I received from the receiver of the Chicago Life Insurance Company was to make an exhaustive examination of the books and accounts, with a view of ascertaining whether or not the results of the operations of the company, in any one year during its existence, justified the payment of dividends.

Q. What amount of actual liabilities of the company matured, that is to say, payable at the time the company went into the hands of a receiver, did you find?

A. I found that, according to the principal report of the directors, that there was a liability of $270,000 in respect of policies in force.

The COURT: The question is, what amount of liabilities were payable?

58 A. These are all the liabilities. The liabilities, of course, could not be put into force.

Q. What was the amount of liability upon them?

A. The liabilities upon stock capital was $135,000.

Q. What was the amount of liabilities that were payable at the time?

A. There was no liabilities that had matured except the death list.

Mr. BONNEY: Amounting to about $6,000?

A. Yes, sir.

Q. Then, at the time the company went into the hands of the receiver, all that it actually owned was about $6,000?

A. Yes, sir.

Q. When you give the largest sum as liabilities you then assume that all the contingent future liabilities on policies outstanding were matured and made payable, do you?

A. I do, sir.

Q. You specified certain discrepancies between the receipts and disbursements from year to year by the company's books and by the statement sent to the auditor; please specify particularly wherein those discrepancies consist.

A. Consist in interest accounts.

Q. Exclusively?

A. Exclusively; that is, so far as revenue is concerned—not so far as expenditures is concerned.

59 Q. So far as receipts are concerned consist solely in the interest which Maj. Wood explains as having been reported, but not carried into the cash?

A. Allow me to explain that. Certain sums of money were received as interest upon the company's investment. That went to the credit of the interest account, and was an item of revenue so far as that was concerned. At the end of half a year, or at the end of a financial year of the company, an arbitrary entry was made through the journal to the debit of stock dividend account and to the debit of stockholders' account and to the credit of interest account, thus going to show in the face of the ledger that a certain sum of money had been received as interest which was not received, but which owed its origin simply to this arbitrary entry.

Q. If the company had been solvent that would have been perfectly right to charge the interest to the dividends?

A. I can see no justification for any such entry.

Q. Then, suppose a stockholder owed the company $1,000 interest, and the company owed the stockholder $1,000 in dividends, you think it would not be justifiable for the company to offset the one against the other?

A. Such a state of things did not exist.

60 Q. Suppose it had existed?

A. Suppose the company owed the stockholder $1,000; what is the other portion of your question?

Q. If the stockholder owes the company $1,000 interest, and the company owes the stockholder $1,000 dividend, I will ask you if it would not be perfectly right to offset the one against the other?

A. Unquestionably.

Q. And you see no necessity, as an accountant, of the stockholder actually paying the $1,000 to the company and the company immediately paying $1,000 back to him?

A. No; certainly not.

Q. So that the propriety of that charge and credit depends altogether upon what may be the condition of the company?

A. Upon the facts.

Q. What facts?

A. Whether or not the stockholder owed and whether the company owed.

Q. I wish to ask you if you can specify any single instance in the accounts of this company in which any dividends were charged to a stockholder against the interest due from him, where the facts did not warrant it?

A. I did not.

Q. You found all these charges of dividend and credits of interest truly and correctly made?

61 A. The books were well kept, although meagre in detail.

Q. In what did the discrepancies in the disbursements consist?

A. Mainly in salaries.

Q. Explain how the discrepancy arose.

A. In the year 1873, in the commission and agents' expenses, I find that the amount actually paid out under these heads amounted to $46,741.09; the amount reported in the sworn statement was $31,741.09, a difference of $15,000.

Q. During a period of seven years?

A. During the period of that year exclusively; the year 1873; that is to say, that in 1873 the commission and agents' expenses actually incurred was $46,741.09, and the amount set forth in the printed and sworn statement was $31,741.09, or a difference of $15,000.

Q. I will ask you whether the larger amount is not stated as a liability incurred, and the $31,000 as the amount actually paid?

A. No, sir; $46,000 is the actual amount paid out, and in order to diminish the expenditure of the company for that particular year, an arbitrary charge was made, by the directions of the officers

62 of the company, by which that $15,000 was taken out of commission and agents' expenses, and placed to the debit of mortgage and loan account.

Q. Why do you say that that was by the direction of the officers of the company?

A. Because the entry was made by one of the officers of the company, and it unquestionably could not be otherwise than by their direction.

Q. Why do you assume to implicate the officers of the company, other than the secretary, when you testified this morning that you could not find any evidence?

A. I am forced to one conclusion, that this entry was made by an officer of the company.

Q. Do you not know by whom the entry was made?

A. It was made by the bookkeeper.

Q. Now, I will ask you whether you attempted to trace all this difference in the amount?

A. In what direction?

Q. Trace it to find in what particular items the difference of $15,000 was made?

A. No; the aggregate amount on that account was simply reduced, the balance being carried to profit and loss.

Q. You find the charge in one item for $15,000?

A. Yes, sir.

Q. Transferred from expense account to what?

A. To mortgage loan.

63 Q. What do you find to represent the $15,000 in the mortgage loan?

A. Merely an entry of mortgage loan debtor to commission and agents' expenses. My investigation of course was made after the bankruptcy, after it went into the hands of a receiver, and I had no means of ascertaining what this entry represented.

Q. May these not have been commission and expenses in connection with those loans?

A. Probably these were.

Q. Would they not be included?

A. Not properly.

Q. Might they not in fact be included?

A. No; I do not think they could.

Q. Can you say they were not?

A. I see nothing in the debit commission and agents' expenses which could be in any shape or form traced to any particular loan or mortgage.

Q. Did you examine the entire cash account to see whether you could trace expenses in connection with the mortgage loans of that company to cover the whole or a part?

A. I traced the cash account through from the commencement to the end, and found that payments made on account of commissions and account of salaries were generally made through the cash book, and posted into the ledger therefrom.

64 Q. Can you swear that this $15,000 did not actually cover expenses and commissions and fees of various kind connected with the mortgage loan?

A. This $15,000 was part and parcel of expenditure of the company in commissions and agents' expenses.

Q. The question is, whether it referred to the commissions and disbursements of the mortgage loans?

A. With any particular mortgage loan it cannot be traced.

Q. I will ask you if you can now explain or say with any certainty that the $15,000 transferred to the mortgage and loan account was in itself a proper proportion of the company for that year?

A. I don't see any connection between the two at all.

Q. Might it not have been exactly that?

A. The books show nothing to justify any conclusion.

Q. The books show the $46,000?

A. Yes, sir; decidedly.

Q. Can you say that the $15,000 had not been actually disbursed for commissions and expenses?

A. The whole $46,000 was disbursed as commissions and agents' expenses for the general business of the company for that year.

65 Q. Assuming that $15,000 of that was incurred for com-

mission and expenses about mortgage loans, I will ask you whether it would not be perfectly proper to transfer it to that account?

A. I think not.

Q. Why not?

A. Because here is a substantial account. A mortgage loan is an item that you purchase. It is not a thing that you sell. These commissions were payments actually made out of the treasury of the company, you understand. It was not property acquired. A mortgage loan is a piece of property that is acquired. You have a lien upon it. Payments on account of commissions and salaries once paid are done with.

Q. Suppose $1,000 is paid as expenses in connection with a mortgage loan, that is so much on account of the loan, is it not?

A. No, sir; it is not to be added to the securities, and it is to be discharged out of the revenue of the company.

Q. I understand you to say that the item which you spoke of was transferred from the general expenses to the expense account on the mortgage loan?

A. No, sir; it was transferred to the investment account. This $15,000 was made to figure as an asset—an amount expended in acquiring the business of that company for that year.

66 "Mortgage loan debtor to commission and agents' expenses:" that is on the revenue side *side* of the ledger, and, of course, was an asset just as your cash balance.

Q. This was entered to commission and agent's expenses?

A. Yes, sir.

Q. Where, then, was the fraud *of* irregularity in stating it as an expense?

A. It was not treated as expense; it was treated as investment; this $15,000 was taken out of that account and placed into the treasury of the concern as a realizable asset.

Q. It was called commission and disbursement?

A. Commission and disbursements was the account that was charged with the $4,000; after settling up the business, it was found that that was excessive; it was reduced by that transfer to the investment account.

Q. On what ground did you say that it was found that it was excessive?

A. Because it was made in that way.

Q. It is an inference of yours?

A. An invariable inference; I am forced to it.

Q. You infer that *that* they thought that was too much, and you say they transferred to the investment account; please state the entry just the way it was made of this $15,000.00?

A. The actual amount under that general head, the actual

67 charge to profit and loss, was $15,000.00, being covered by transfers to mortgage and collateral loan accounts.

Q. Tell us how the entry was made of the $15,000.00.

A. The mortgage loan account? It was to commission and agents' expenses, this sum transferred, $15,000.000.

Q. Now I ask you to state to the court, as an expert accountant,

whether that does not mean exactly and precisely that the officers making or directing that entry estimated that of those expenses, the $15,000.00 belonged to the mortgage loan account?

A. It could not by any possibility, because it was increasing the cost of the investment made by the company by the amount which was incurred in the expenditures in acquiring it.

Q. Suppose the mortgage-loan account had in fact cost that $15,000.00, would not it be right to charge it there?

A. If I had private security for, say $15,000.00, that was worth $30,000.00, but I had spent an extra $15,000.00 in acquiring it, making it equal to its face value, then I might charge mortgage-loan account to its full amount, but did not do it.

Q. How could you say that was not exactly what was done?

A. There is nothing to show on the face of the books that that was so.

68 Q. The books show just that. The books show that the estimate at the end of the year, that of the total expenses of $46,000.00, about $15,000.00, was estimated as being the share belonging to the investment account, and that was charged over. I am asking you whether, if it had been the intention to work any fraud on the part of the person directing that entry, he would not have covered or concealed the $15,000.00 entry by calling it a fictition loan?

A. By my examination, I am forced to this belief, that these expenditures, when they had been adjusted at the end of the year, were reduced by the transfer-ence to the investment account, and which was not justifiable under any principle of bookkeeping.

Q. You don't answer my question, which is, if it was an attempt to work a fraud in charging this $15,000.00 over to the investment account, would not the person perpetrating that fraud have covered or concealed it by a fictitious entry of an additional loan?

A. It was impossible to conceal it.

Q. It appears to have been openly done?

A. Certainly.

Q. Let me ask you this: Suppose the bookkeeper of that company should come here and testify that at the end of the year he

69 made that entry: that it was carefully estimated that exactly that sum belonged to the investment account as its share of the expenses of the year, what would you say then?

A. I would withdraw my objection.

Mr. SHERMAN: Would that make an asset of it?

A. Certainly not, unless the security was worth it.

Q. Does it stand in the nature of an asset now?

A. It stands in the nature of an asset.

The COURT: I don't see how that debit account makes it $15,000 asset.

A. It is brought in on the debit side of the ledger. Every entry on the debit side of the ledger is an asset. Every debit on the credit side is a liability, which the company have to meet. The

company owes a certain amount of money to A, B, and C, and it is put on the credit side. On the other side they have how much they have in bank and how much they loan on mortgages. This mortgage-loan account was increased by this charge over expenditure. A mortgage loan of that amount was increased and the expenditures diminished.

Q. It was $15,000 less?

A. The mortgage loan originally stood at $100,000.

Mr. BONNEY: State whether you ever saw bank statements with resources and liabilities.

70 A. Yes, sir.

Q. State whether you ever saw the expense shown in the resources in the statement.

A. Certainly.

Q. They always show it there?

A. No, sir; it is accounted for in profit and loss account.

Q. Is it not true that in making out the current bank statements the current expenses is shown usually as an item in the resource table?

A. Do you refer to the absolute final balance of the year?

Q. I speak of the general statement.

A. In the general statement it is, but at the same time that is not an asset.

Q. I will ask you whether an item which is named expense in that account is an asset?

A. It is not.

Q. Is not it true that all the bank statements that are made up show what they have expended during the year or during the period in the table of resources for the sake of striking the balance?

A. Precisely; but to profit and loss on the other side.

Q. I ask you how you can state here that an item in the loan and investment account called expense was intended to be represented as a valuable asset?

71 A. Because it was removed from that strict category and put into a different line, in which it took a different status entirely. It became an investment.

Q. Let us suppose, now, that the sum of $15,000 was actually paid out for expenses and commission in connection with the mortgage-loan, and the residue of the $16,000 was paid out about the current expenses of the company, would it not be perfectly right to separate those two sums, and leave the $31,000 in current expenses and carry the $15,000 to investment?

A. If the mortgage which was acquired by the expenditure of that could bear the infliction of that; but if not, no.

Q. Does it make any difference to a book-keeper whether the mortgages can bear it or not, if the expense was actually incurred?

A. The expenses ought to be discharged out of the current revenue of the institution, and not added on to its investments.

Q. If that investment actually cost expense and premium, is not it right to charge investment with expense and premium?

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Q. Does it make any difference to a book-keeper whether the mortgages can bear it or not, if the expense was actually incurred?

A. The expenses ought to be discharged out of the current revenue of the institution, and not added on to its investments.

Q. If that investment actually cost expense and premium, is not it right to charge investment with expense and premium?

A. No, sir; that is to be discharged out of the current revenue of the concern; you enter into an enterprise; you invest a certain amount of capital; you convert that capital into dividends, and the cost of developing that business and carrying it on must be paid out of whatever profits you make, and not be put into the amount of securities that you acquire.

72

Q. If you want to show the burden of insurance business and the burden of loan business, you would separate them?

A. Yes, sir; certainly. Instead of being put to profit and loss it was put to investment. This $15,000 should be discharged out of the current revenue of the year. Instead of that it was added into the resources of the company.

Q. You mean to state to the court, don't you, that you think that entering at the foot of the investment account what the estimated expense of that account for the year was a fraud?

A. I simply say this: that an attempted deduction of expenditure of carrying on the business for that year was made the transferrance of that item from outgo to resources.

Mr. SHERMAN: The mortgage and loan account, if I am correctly informed, arises from aggregate sums loaned or invested in mortgages and in loans?

A. Yes, sir.

73

Q. Those were represented by some collateral or valuable thing?

A. Yes, sir.

Q. At the end of the year an arbitrary entry was made increasing the sum total on the mortgage and loan account by $15,000?

A. Yes, sir.

Q. Thus making it apparently true that the sum was $15,000 larger than they had anything to represent?

A. On the face of the books that was the case.

Mr. BONNEY: I will ask you whether the residue of the discrepancy shown in your statement consisted of similar items?

A. Similar items, general salaries, and commissions and dividends to policy holders, and such.

Mr. HIGH: Are you able to state from the examination you have made whether interest was paid to the company upon the mortgages securing the stock subscriptions?

A. I am not.

Q. You have no knowledge?

A. No, sir; I have not.

GEORGE M. BOGUE, being first duly sworn, testified in behalf of the complainant as follows, in answer to interrogatories propounded by Mr. High:

Q. State your name, residence, and occupation.

74

A. George M. Bogue; residence, Hyde Park; I am the receiver of the Chicago Life Insurance Company.

Q. State, if you know, in what condition you found the capital stock or the securities representing the capital stock of the Chicago Life Insurance Company upon your appointment as receiver.

A. About $100,000 of the capital stock of the insurance company was represented by notes without interest, not bearing interest, secured by mortgages in various localities and some by collateral loans.

Q. With regard to the notes, I will ask you whether they were time notes or demand notes?

A. They were payable on demand. They were demand notes.

Q. State, if you know, whether, from your investigations of the affairs of the company, any demand was ever made for the payment of those notes by the officers of the company.

A. I could never find that there had been any demand made by the officers of the company.

Q. State whether interest was added upon those notes to the company.

A. In a few cases they were paid. In the great majority of cases they were not paid.

Q. Can you specify the cases in which interest had been paid upon the securities representing the stock subscriptions?

A. I might change my answer. In a few instances they bore interest, the note specified interest, and in the other cases, the
75 majority of instances, they did not bear interest. In such cases where the note bore interest on the face, I collected it. The instances I will name as I remember them. The security of Dr. Isham, one note of $3,000 and one note of $2,000, and of Er. C Treat, if I remember right, about $1,000.

Q. Were there any other of the notes that bore interest on their face?

A. There were none; no, sir.

Q. How was it with Mr. Tucker's?

A. The securities of Mr. Tucker, which represented his stock, did not bear interest.

Q. Were there any stock subscriptions paid in cash; and, if so, which?

A. There was a small instalment of cash on about all of the stock subscriptions.

Q. How much?

A. I think ten per cent.—that was in the Old Traveller's, which was merged into the Chicago Life Insurance, and new stocks of the Chicago Life Insurance Company issued share for share.

Q. Did you find that any individual stockholders of the Chicago Life Insurance Company, who was a stockholder at the time you took possession, had paid his stock in full?

A. Mr. S. M. Nickerson owned stock in the company to the amount of $1,000. He had paid his in cash.

Q. Had any others?

76 A. Not that I remember.

Q. Then, with the exception of Mr. Nickerson, who paid in full, all the others were represented by notes of collaterals?

A. Yes, sir; that is right.

Q. And with the exception of Isham's subscription and Treat's,

none of these subscriptions to the capital stock, or the notes representing them, bore interest?

A. I think not, without it might possibly have been Mr. H. Z. Culver.

Q. The other notes were all made payable on demand?

A. With no rate of interest stated; yes, sir.

Q. State whether after your appointment you made any demand upon those notes; if so, how soon after your appointment?

A. As soon as I got the papers back from the State department, at Springfield. I think it was about the first day of August—within the first few days of August, 1877.

Q. How much capital stock did you find had been issued in all?

A. $125,000.

The COURT: Is that the stock of the Chicago Life, including what had been reissued to the Traveller's?

A. Yes, sir; it is the same thing. There was an amendment to the charter of the Traveller's Accident Insurance Company by which the stockholders and directors could change their name to
77 the Chicago Life Insurance Company, and it became the Chicago Life Insurance Company.

Mr. HIGH: State whether after your appointment as receiver, acting under the orders of the court, or otherwise, you caused a valuation to be made of the liabilities of the company; if so, what did you do in that respect?

A. I asked for an order of the court to direct that an actuary be employed for the purpose of determining the surrender value of the policies at the date of the insolvency of the company, which was done, and that was reported to the court, including also the liabilities for death losses.

The defendant objected to the assumption that the company was insolvent, and also on the ground that the point of this inquiry is irrelevant to the issue now on trial before the court.

Q. By the insolvency of the company as is spoken of in your answer, you mean the time you was appointed as receiver?

A. The time the court took possession and directed the receiver; yes, sir.

Q. Who was the actuary employed under that order of court to make these valuations?

A. Mr. John J. Brinkerhoff, the actuary of the insurance department, at that time, of the State of Illinois.

Q. Look at the report now shown you, purporting to be your report of the valuation of the policies as filed in this case on
78 the 30th day of March, 1878, and state what that is.

(Handing witness report.)

A. This is the receiver's report—the valuation of policies embodying the finding of actuary, Mr. Brinkerhoff.

The complainant here introduced in evidence the paper referred to.

The COURT: Let it go in, and let each party use so much as desired.

The complainant also introduced in evidence the petition of receiver concerning the valuation of policies, filed in this cause on the 26th of October, 1877, and the order entered in this cause on the 31st day of October, 1877, directing this valuation of losses.

Mr. HIGH: State whether the valuation thus found has been accepted and acted upon since it was filed, or what has been done in regard to it?

A. The valuation as certified to, the individual policies, have been accepted, and dividends have been paid on them so far as they have been accepted.

Cross-examination by Mr. BONNEY:

Q. You may state, Mr. Bogue, whether the valuation of policies, of which you have spoken, was made without any notice to or action of the officers or directors of the company.

A. I don't know whether that was so or not.

79 Q. You don't know of any notice to them, or any action on their part in regard to the matter, do you?

A. No, sir; I don't.

The complainant offered in evidence a part of the records of the company. The record-book of the company is produced and the following evidence is offered:

The proceedings or the record of the company on January 16, 1877, on pages 113 & 114.

Also the proceedings of February 20, 1877, on pages 115 and 116. Also the proceedings of July the 2nd, 1877, on pages 122, 123, up to 131, inclusive.

Hereupon the complainant rests; and the defendant, to sustain the issues joined upon its part, introduced the following testimony:

WILLIAM F. TUCKER, being first duly sworn, testified in behalf of the defendant, as follows, in answer to interrogatories propounded by Mr. BONNEY:

Q. State your name and the length of time during which you were president of the Chicago Life Insurance Company.

A. William F. Tucker; I think it was in '67; the books would show, but my impression is it was about February, '67, up to the time it lapsed.

80 Q. That you were president?

A. Yes, sir.

Q. Do you know who your predecessor, as president of the company, was?

A. It was either James L. Stark or a Mr. Page, and I could not say which preceded me.

Q. The records will show?

A. Yes, sir; I think it was one of those.

Q. State whether you had any knowledge of any deficiency, or

alleged deficiency, of the assets of the Chicago Life Insurance Company prior to the time of the examination made by Mr. Woods, of which he has testified here in court to-day.

A. I never did.

Q. State whether up to the time of that examination, as stated in Mr. Wood's report, you believed that the company was solvent and in good condition.

A. I did.

Q. State whether at the time you signed the various reports which have been mentioned in the evidence in this cause, as made by you and Mr. Clapp to the auditor, you believed them to be correct and true in all particulars.

A. I did.

Q. When did you first learn about what are called the Clapp and Barry securities?

A. It was on the morning of the next day, after I had found that he gone away.

81 Q. State whether when these securities were produced for examination by a committee of the directors, you believed them to belong to the company—to be its property.

A. I did, assuredly.

Q. You may state whether you have ever read the proceedings of the meetings of the company, as entered in the record book, now here produced.

A. I never read a page in those books. The proceedings might have been read at a meeting of a previous meeting, or the sum and substance of a previous meeting, but I never read a page in one of those books in my life.

Q. You believed those books to be true?

A. I suppose they were.

Q. You were president of the Stock-Yards National Bank for some years?

A. For nine years.

Q. State whether you had a general knowledge of the manner in which the officers and directors of institutions, such as banks and insurance companies, performed their duties?

A. I know nothing about any other, except this insurance company.

Q. You may state whether, prior to the examination and report of Mr. Wood, your attention was ever called to the matter of their being any irregularity in the accounts or affairs of the company; whether there was anything to excite your suspicion that

82 everything was not going on right.

A. There never was.

Q. Do you remember the proposal made to Maj. Woods, to reinsure the liabilities of the company after his examination?

A. I was not present at the time that this proposal was made by Mr. Currier. He told me.

Q. You did not know it of your own knowledge?

A. No, sir.

Q. You believed, then, Mr. Tucker, that you were performing your whole duty in regard to that company?

A. I did.

Cross-examination by Mr. E. B. SHERMAN:

Q. During the time you were president of the company, were you frequently in the office of the company?

A. Oftentimes. Every day, and then again, perhaps, once or twice a week.

Q. You had every facility of examining the book of the company if you desired?

A. Certainly.

Q. As a matter of fact, did you ever cause an investigation to be instituted to ascertain whether the company had ever paid for the securities reported *reported* to the department as the property of the company?

A. We had an examination every year while I was with it by a committee of the directors, and also, I think, from the State
83 department. And the books I never handled myself, because it would not do any good. I never was a book-keeper, and could not examine the state of books.

Q. Did any of those committees or directors ever report to you as its president, that there was any securities here that were not owned by the company or which the books did not show them to own?

A. Never.

Q. Do you know, as a matter of fact, whether any of them made any examination whatever in that regard?

A. I don't know that they ever went through with the books to examine the books.

Q. Do you know upon what they predicated their reports that everything was all right and the company was prosperous?

A. There was a schedule made out by the secretary each annual meeting for the directors and stockholders, that such and such property belonged to the company, and that the condition of it was so and so.

Q. As far as you were concerned that was accepted?

A. That was accepted, so far as I was concerned.

The COURT: It made the basis of reports?

A. Yes, sir; sometimes I was on that committee myself.

Q. As far as you knew?

A. As far as I knew.

84 Mr. SHERMAN: You have been in business here for a long time?

A. Since 1858, in March.

Q. And have carried on and conducted, or assisted in carrying on, many business enterprises of different kinds?

A. Not very large; but I was busy most of the time till the last three or four years.

Q. You had a large business experience?

A. No, sir; only in my particular line.

The COURT: What do you attribute the bankruptcy of the company to now?

A. The rascality of one man.

Q. Who is that?

A. The secretary.

Q. Can you tell me why the secretary was never prosecuted for that rascality?

A. No, sir; I cannot.

Q. Did any of the board of directors take any action about it?

A. I could not find him.

Q. Since they have been able to find him?

A. It was then said that the time had gone by, as I understood it.

GODFREY SNYDACKER, being first duly sworn, testified in behalf of the defendant as follows, in answer to interrogatories propounded by Mr. Bonney:

Q. Please state your name in full and your occupation.

85 A. Godfrey Snydacker: I am in the banking business.

Q. How long have you been engaged in that business?

A. Since 1858—23 years.

Q. State whether you were one of the directors of the Chicago Life Insurance Company.

A. I have been.

Q. For what length of time?

A. I think I was one of the starters; I think, from 1869 to the time of its collapse.

Q. State whether you were also at any time a member of the finance committee of the board of directors.

A. I have in different years been a member of the finance committee.

Q. State whether you also acted as a member of the examining committee to examine the securities of the company?

A. That was the only object to the finance committee.

Q. State whether prior to the examination and report, of which Maj. Woods has testified to-day, you had any information, knowledge, or suspicion that there was any deficiency of the assets of the company, or anything wrong in its accounts.

A. Never in the least.

Q. State whether you, or the committee of which you were a member, ever counted, certified, or passed as property any securities of the company which were not produced before you, and appeared to be the property of the company.

86 A. We never did. The assets were laid before us, and we examined them one after another, and summed them up; that was our task as examining committee.

Q. State when you first heard of this claim of Clapp and Barry securities amounting to $64,000?

A. I never could believe a word of it, because it seemed to me so improbable that people should make out papers payable to the

Chicago Life Insurance Company without being able to endorse them over to anybody else, and in that way cut themselves off from such an amount of money invested.

Q. Did you ever hear of that claim before Maj. Woods' report?

A. Never.

Q. The title to those securities stood in the company?

A. Let me see. I want to correct myself. I think a day or two after Mr. Clapp had absconded, I believe Mr. Barry came to see me, and said that he claimed a certain amount of papers somewhere among the assets of the company.

Q. That was the first you knew?

A. That was the first information I ever had of it.

Q. State whether, so far as your duties went, you exercised the same care over matters of the Chicago Life Insurance Company as you did over your own affairs?

87 A. I could not have done better for myself than I tried to do for them.

Q. State whether you were present when after Maj. Woods' examination, a proposal was made to him to reinsure all the outstanding risks of the company?

A. Yes, sir; I was.

Q. State whether that proposal was to make such reinsurance in some, or in any good company to be approved by him?

(Objected to.)

A. The proposal was to insure, and take a blanket insurance on all policies for 60 days, and during that time to try to raise sufficient funds to pay.

Q. State whether that proposal was accepted.

A. It was not.

Q. State whether the board of directors endeavored to obtain time from the auditor, through Maj. Woods, for the purpose of looking into the affairs of the company and arranging some plan to make up the alleged deficiency?

A. Yes, sir; we did, but without avail.

Cross-examination by E. B. SHERMAN:

Q. You were, I think you said, of the finance committee?

A. Sometimes I was.

Q. What was the duty of that committee?

88 A. The duty of that committee, according to my understanding, was to examine the assets as stated and given by the secretary.

Q. Did the finance committee superintend the taking of investment of funds?

A. Never; that was wholly the task of the president and secretary.

Q. They never decided upon what securities could be purchased nor what should be paid for them?

A. No, sir; they never made any investments.

Q. All the finance committee did, as I understand you, was to

come to the annual meeting, where the secretary produced his list and his papers, the finance committee checked off the list by the papers?

A. Yes, sir.

Q. And then reported them?

A. Yes, sir.

Q. That is all the finance committee ever did, so far as you know?

A. Yes, sir.

Q. Did you ever read in the by-laws what the duty of the finance committee was?

A. I never saw the by-laws.

Q. Article 6th of the by-laws reads as follows: "There shall be a committee of finance, consisting of three members of the board, chosen annually, who shall act, in the absence of the board of directors, with the officers in the adjustment of losses, and in providing the means to pay them. Said committee shall have general charge of the
89 finances and accounts of the company. It shall have power to make investments of the funds of the company, and decide upon the securities for the same." You never knew that was a part of your duty?

A. No, sir; allow me, however, to remark that this finance committee was only temporarily appointed. There was an adjusting committee that attended to the adjustment of losses.

Q. This finance committee lasted a year—was appointed at one session and lasted until the next?

A. I really don't recollect whether it was appointed at the beginning of the year or whether it was only appointed for the purpose of examining the assets of the company.

Q. How frequently were you in the office of the company during the time while you were a member of the board?

A. I hardly ever came to the office, except to board meetings.

Q. Did you ever make, or cause to be made, any examination of the books to ascertain what securities the company had actually bought and what it had actually paid for them?

A. I relied mostly on the examination of the auditor, whom I knew was the party to see for us. It would be an impossibility for a man of my occupation to sit down and go through the
90 books, which took Col. Woods about two weeks, to do that in two hours.

Q. Your company made sworn reports every year, did it not, as to the state of the assets?

A. I don't know anything about it; it was not my province nor my duty.

Q. Are you not aware of the fact as a matter of fact, that sworn reports were made to the department every year by the company?

A. I suppose they were.

Q. Don't you know it as a matter of fact?

A. Not except after some remarks were made to me, after the close of the company.

Q. Did you not ever know during the time, until the company was

closed, that sworn reports were demanded by the department, and received every year?

A. Yes, sir; I suppose so.

Q. You knew of a matter of fact those were tabulated into little circulars, and sent all over the country in order to increase the business of the country?

A. I supposed so.

Q. How can you say that you relied upon the auditor's department, when the auditor's department simply accepted the sworn statement of your own officers?

A. Well, I am not acquainted with the insurance business; it was the first time I went into it; I was always of the opinion that it was the auditor's duty to thoroughly examine the books in

91 order to protect the public.

Q. You mean to take care of the directors?

A. Yes, sir; to take care of the directors; that would have been taking care of the public, and of the directors indirectly.

Q. Did not you know that the directors sustained the relation of trustees to the policy-holders, and it was their business to know all the transactions of the company?

A. I think so.

Q. You thought the auditor was a trustee for the directors?

A. I thought the auditor was confined particularly to that, because it was his own calling.

THE COURT: How much stock did you have?

A. $2,500 worth of stock.

Q. How much did you pay on it?

A. I paid every cent of it.

Q. Paid it all up?

A. Every cent.

Mr. SHERMAN: How did you pay it up; did you pay in cash, or securities?

A. I at the time deposited securities, and when the securities became due, they were paid.

Q. You paid it up since the receiver's appointment?

A. Yes, sir.

Q. What kind of note did you give to secure your subscription for stock; was it a demand note?

92 A. I don't recollect.

Q. Was it with interest or without interest?

A. I don't recollect whether I ever signed any, but I know that much, that every security that I deposited was as good as an honest bond.

The COURT: Who drew the interest on the securities; you?

A. Yes, sir.

Mr. SHERMAN: You never paid any interest?

A. Never paid any interest.

Mr. BONNEY: State whether it was not as you understood the

usage and practice of the auditor's office to allow parties standing in the position you did to take interest on their securities.

A. Yes, sir; I considered the auditor as a kind of security bond.

Q. What is called the guarantee capital?

A. The guarantee fund or the guarantee capital.

Q. Do you remember seeing the George B. Clapp note for $10,000 when you examined the securities at any time—

A. I don't recollect.

Q. Payable to the order of the maker, and endorsed in blank?

A. I don't recollect.

Q. You may state whether, up to the time of Maj. Woods' examination, you believed the company to be solvent and in good condition.

93 A. I did.

The COURT: How could you believe so without having made an examination yourself?

A. Mr. Clapp had been in the employ of the company for ten or twelve years, and was considered by every one of the members of the board a straightforward, honest, and reliable man. He was a highly intelligent man.

Q. As a matter of fact, did you or the board never examine his books?

A. No, sir; I could not, even if I would, unless I should spend half a month or a month's time.

Q. You never made any kind of an examination?

A. No.

Mr. BONNEY: You may state whether the securities taken by the company were accompanied by valuations and abstracts of title showing apparently that they were all right and a proper amount.

A. Yes, sir; every one of the notes was accompanied by a trust deed, by an abstract of title, by insurance, and by a valuation.

Q. Then, when you examined the securities of the company from time to time, you had apparently evidence of its solvency and good condition?

94 A. Yes; and they were all closed up, and boxed up in the company's box, which seemed to be invented for that purpose wholly, and for nothing else.

Q. State, Mr. Stryacker, whether you are familiar with the values of real estate securities.

A. I should think I was, because that is my exclusive business. I am not in the regular banking business. I am only in the mortgage bank business.

Q. State what in your judgment was the amount of the decline in the real estate securities from the panic of 1873 down to the summer of 1877.

A. That is hardly possible to describe. There were pieces of real estate that went down from *from* 1,500 or 1,000 dollars down to one hundred or one hundred and fifty dollars per acre, and at that ratio. Others did not fall quite so much. I would not be able to give a ratio of the decline of real estate during that time.

Q. Would it not probably amount to fifty per cent?

A. Yes, sir; that you may safely say, but I think it was a great deal more in a great many cases.

Q. As a matter of fact this company, treating *treating* the Barry and Clapp securities, which apparently belonged to it, and the others as its own, and without allowing for the decline in real estate,
95 was solvent on the American basis, was it not?

A. I always believed it, although I am not an insurance man.

(Objected to.)

Q. State who else was in the office of the company besides Mr. Clapp, who had to do with the accounts and books of the company.

A. I think for the last few years there was a gentleman by the name of Mr. Baker.

Q. State whether Mr. Baker was in the company's office when the meetings of the board of directors were held, and appeared to be familiar with the books and accounts.

A. Yes, sir; he generally was.

Q. State whether the statements made up for your inspection were not largely made by him.

A. I could not tell.

The COURT: Did he run away?

A. No, sir.

Q. Mr. BONNEY: Who was the active manager of this company?

A. The active manager, in fact the only man who managed the whole business, and who had the implicit confidence of the company, was Mr. Clapp. Mr. Tucker was president from time to time, and came there and signed policies, &c., but I think in the main Mr. Clapp managed the business of the company.

96 Q. Did the directors allow Mr. Clapp to change the securities at his pleasure? Your notes were secured by real estate securities or other securities. Could he change them at his pleasure?

A. I don't think that was the practice. The securities, at least for a good many years, were held in Springfield, and I recollect when I wanted any securities I got Mr. Clapp to secure them for me, and I gave him the new securities, accompanied with valuations and the title.

Q. Did you pass on the securities?

A. It was the auditor's business.

Q. So far as the company was concerned you passed on them?

A. We did not pass on them at all. Our conception of the matter was this: The auditor wants a certain amount of security in order to protect the policy-holders. Now, he must be satisfied with the character of the securities, with the amounts, &c. Now, suppose, for instance, I had a security of $2,500. I wanted it back. I could not get it back until I placed another one. I send a new security down, accompanied by abstract of title, by whatever was necessary for it, and by valuation of two competent real estate dealers here in this city, and upon this the other was sent back.

Q. The secretary would settle it?

A. Yes, sir.

97 Q. You did not care what the securities were so long as the auditor was satisfied: is that the idea?

A. That is it.

Q. As director of the company you did not look after the securities after they were deposited to secure notes?

A. That was the established practice in the office before I became a stockholder, although I thought it might be conducted differently; still, I felt rather delicate to intrude.

Mr. SHERMAN. There were but $100,000 of securities deposited with the State treasurer?

A. Yes, sir.

Q. The balance was in the hands of the company?

A. Yes, sir.

Q. When there was any other securities taken not those of Springfield who passed on them?

A. I think it was in the province and I think it was done by the resident secretary.

Q. Then Mr. Clapp took what securities he had a mind to, and at what valuation he was a mind to?

A. I could not say that. Every one of those securities was submitted to Mr. Tucker, so as to have his consent, but they were the acting officers.

98 Q. As one of the directors and one of the finance committee you never passed upon the question as to whether a security was good for what it called for, but left that to Mr. Clapp and such others as he consulted with as to whether the security was good?

A. I was not particularly asked, but we generally passed a kind of approbation on securities as offered.

Q. Did you ever have valuations made at your meetings as to what the value of this real estate security was?

A. As I say, every one of these papers was accompanied by valuation of competent dealers.

Mr. BONNEY: Did not your examination of these securities, from time to time, when they were purchased and exhibited to you, extend as well to the value of the security as to the amount of security in the list of assets?

A. Yes, we did even go that far, but I recollect the securities offered were generally good and of first rate character.

Q. State whether, in any of your examinations, you found any instance of deficient security of which you deemed it your duty to find any fault or make any complaint to the secretary?

A. No, sir; I never did.

Q. Do you remember any instance in which any question was raised either by the auditor or his examiner who came to look into the affairs of the company, or the directors, in regard to the

99 sufficiency of the securities when they were taken?

A. No, sir.

SAMUEL M. NICKERSON, being first duly sworn, testified in behalf of

the defendants as follows, in answer to interrogatories propounded by Mr. Bonney:

Q. Please state your full name and occupation.

A. Samuel M. Nicherson: I am a banker.

Q. You are president of the First National Bank, and have been for a good many years past?

A. Yes, sir.

Q. You are one of the directors of the Chicago Life Insurance Company?

A. I was.

Q. And a member of its finance committee?

A. My recollection is that I was appointed one of the examining committee, not the finance committee.

Q. You did examine its securities from time to time?

A. Yes, sir.

Q. State whether you ever counted, passed, or accepted any securities which were not apparently good for the amounts stated in them, and belonged to the company?

A. I never did. At the last examination which I was called upon to make we were furnished with a list of the securities,
100 and they were all there as the list called for. Every piece of paper that was made to the order of the Chicago Life Insurance Company was accompanied by trust deed and valuation, &c. I was not having anything to do with placing the loans. I did not consider that I was called upon to report anything except the securities which were placed before us.

Q. Was not the value of the securities frequently a subject of conversation in your committee when you examined them, and comment made that they were exceptionably good?

A. In a casual conversation, not that I expected or intended to pass upon the value of the securities any further than the evidence before me.

Q. State whether you believed the company to be good and solvent up to the time of Maj. Wood's examination, and the following seizure.

A. I had no occasion to think otherwise.

Q. State whether, so far as your duties towards the Chicago Insurance Company extended, so far as you were called on to act in relation to it as director or member of the committee, you used the same care and attention as you used in regard to the affairs of your bank.

A. I could not state it as strong as that. I will say I do no even now recollect when I was elected as director, but my recollec-
101 tion is three, four, or five years before the failure of the company. I never had but a nominal amount of stock, a thousand dollars, and that I paid my money for. I never gave my note to the company. And I am pleased to confess that my name was used in connection with it. Three or four years previous to the failure of the company I was in Europe, and gave no attention to it whatever, and I think that the records will show that probably I never attended more than one or two or three meetings during my

connection with the company. When I was called upon and notified that I had been appointed examining committee to examine the assets, I could not tell. I know at the last examination just previous to the failure of the company I acted in that capacity, but whether I ever did before I do not recollect.

Cross-examination by Mr. E. B. SHERMAN:

Q. You decline to say that you gave this company the attention that you gave to your ordinary business?

A. I am frank to say that I did not give it but very little attention.

Q. It would not be ordinarily possible, at least not probable, that 40 or 50,000 dollars of securities would be imposed upon your bank that really belonged to somebody else?

102 A. In the same way they imposed on me by that examining committee; it could be done by my cashier showing me notes made by our customers and payable to the order of the bank, and having every evidence on the face of them that they belonged to the bank. I could be imposed on in the same way as Clapp imposed on the company when he produced mortgages payable to the order of the life-insurance company, and having every evidence that they belonged to the company. I was imposed upon in that way.

Q. It is not customary in your bank, is it, to take assets simply upon representations of subordinate officers, without examining whether those were paid?

A. It would be too long to go into the details of the banking business, or to explain that. When a man borrows money he either gets the money direct, or it goes to his credit if he is a customer. To illustrate it: We have in the bank, as every bank has, an examining committee. The cashier places before him the assets, in the shape of bills, discount, and bills of exchange, &c. They check them off, and find that they have the notes, bills of exchange, &c., to the amount that was called for. The securities of the Chicago

103 Life Insurance Company were placed before me in the same way, and the only examination I made was to ascertain that the list which was furnished me—that they had the corresponding papers.

The COURT: How was it as to the value of them?

A. I did not know further than the evidence was before us as to the valuation.

Q. You took that as evidence?

A. Yes, sir; the property itself I had no knowledge of.

Mr. SHERMAN: You don't mean to be understood as saying that it is possible that your cashier has a lot of securities there to-day to the amount of 50 or 100,000 dollars, which don't belong to the bank, for which the bank has never given any equivalent whatever, but which, in fact, belonged to somebody else; you don't mean that a thing of that kind would pass your examining board?

A. No, sir; I don't think we have—that is, merely as you call my attention to the banking business in connection with this.

Q. You never caused any examination to be made, did you, as one of the directors, or as finance committee, of the cash, to know whether the company had actually paid out anything for its securities?

A. Never.

Q. You simply took the schedule furnished by your secre-
104 tary, and the assets purporting to be in the name of the company, and checked them off; that was the extent to which the examination went?

A. Yes, sir.

WILLIAM V. BAKER, being first duly sworn, testified in behalf of the defendant as follows, in answer to interrogatories propounded by Mr. Bonney:

Q. State your full name.

A. William V. Baker.

Q. State whether you were ever in the employ of the Chicago Life Insurance Company?

A. I was in the employ of the Chicago Life Insurance Company, in the capacity of bookkeeper.

Q. For what length of time?

A. From 1869 up to the time of the company's failure.

Q. Who was your superior officer in the company?

A. Mr. John W. Clapp, the secretary.

Q. State whether he had the actual management of its affairs.

A. He had entirely.

Q. State what accounts were kept by you, and state generally the scope and extent of your work as bookkeeper and accountant for the company.

A. I simply kept the ledger and journal and the principal cash book. Mr. Clapp kept the cash himself from which I made a transcript in the general cash book, and from that made my
105 entries to the journal and from thence to the ledger. Besides that, the principal part of my work was to look after the agent's reports, and make proper credits, and see that their commissions were properly credited, and so on.

Q. State whether the body of the annual reports made by the president and secretary to the auditor was in your handwriting?

A. They were, the most of them.

Q. State whether, up to the time of Maj. Wood's examination and the report which he made following it, you had any knowledge or conception that there was any deficiency of the assets of the company or anything wrong in its accounts.

A. Most emphatically not.

Q. State what you had to do with the securities of the company; did you keep the accounts of them.

A. Yes, sir; the ledger accounts show the mortgages and loans and collaterals, and I made most of the trust-deeds. I think the most of the trust deeds were in my handwriting.

Q. Do you remember at the close of the year any examination or estimate to show what portion of the expenses of the company belonged to the loan investment account?

A. No, sir; I do not. If I had expected anything of this kind, I might have refreshed my memory; I don't remember anything about it.

106 Q. State whether, during the time you were engaged in the office of the company, you discovered anything in the accounts that suggested to you or excited your suspicion that there was anything wrong in Mr. Clapp's conduct?

A. Not until the last, when I remarked to him one day that the balance of the ledger account did not agree with the schedule made, to which he replied in some plausible way, and that it was his business and not mine, and he would attend to that. That was just previous to the schedule that we presented to Maj. Woods.

Q. State whether you knew of the examinations of the securities by the examining committee of the directors, from time to time?

A. I simply knew of them in this way: That the box of securities would be brought out and taken in the director's room, and then in the course of time be brought out again; but I never was present that I remember, unless I may have been called in.

Q. State whether all these securities were accompanied by abstracts of title and certificates of valuation?

A. Yes, sir; they were.

Cross-examination by Mr. SHERMAN:

Q. Did you ever make any entries in the books not based on actual transactions?

107 A. Not that I know of. There may have been some entries made, but if they were made they were in this way: Mr. Clapp would make his entries in a way that they were to be on a slip of paper, and put them in a box that he had alongside of his desk, and then in the course of a day or two I would take the slips and make entries from them.

Q. You simply made such entries in that regard as you were directed by Mr. Clapp?

A. Yes, sir; entirely.

Q. You did not know yourself as to the nature of the transactions?

A. No, sir; I did not.

The COURT: That was your duty to obey Mr. Clapp's orders in that respect?

A. Yes, sir; it was.

Q. You remained here and gave the examiner all the information you could in regard to these matters?

A. Yes, sir; I was appointed secretary *pro tem.*

Q. You assisted Mr. Woods?

A. Yes, sir.

HOWARD Z. CULVER, being first duly sworn, testified in behalf of the defendant as follows in answer to interrogatories propounded by Mr. Bonney:

Q. Please state your full name.

A. Howard Z. Culver.

108 Q. You are one of the directors of the Chicago Life Insurance Company?

A. I have no recollection of it. If I was, I don't think I ever knew it.

Q. You were a stockholder in that unfortunate institution?

A. I was a stockholder. In reference to that first question, I had been elected a director of two or three institutions that I know of. They made no comment in reference to it. I remember one especially, and after two or three years I attended a meeting, and said I thought they had better drop my name; but I have no recollection of ever having been notified of my election to the directorship of the Chicago Life Insurance Company. If I was ever director, I have forgotten it.

Q. You have no recollection of attending any meeting or making any examination in reference to its securities?

A. Never; I should have known that.

Q. I will ask you to state whether up to the time of the examination of Maj. Woods and his reports you had any knowledge or information or suspicion that the company was not solvent?

A. None whatever, I think. The first information I had came from Mr. Currier, when he told me what had been done, and of a proposal to reinsure.

109 Q. You did not hear the proposal to reinsure yourself?

A. I did not.

Q. You may state whether you have been a director of one or more corporations.

A. I have been.

Q. Of a considerable number?

A. More or less.

Q. State whether you are familiar with the duties of directors and examining committees of corporations.

A. I have known something of such duties.

Q. State what are the duties of an examining committee of a corporation appointed to examine its securities.

A. Well, sir, I have known of the appointment of committees by fire insurance companies where the committee simply took the schedule and verified the directions of this schedule by the actual securities presented, as has been described here. Bank committees I have known to verify the books by looking over the bills of exchange and checks for clearing-houses and counting the moneys. That is about the way it has been done, so far as I know.

Q. State whether it is practicable or possible for an examining committee of an insurance company, for example, personally to examine the various accounts in the books of account and verify the items and computations for themselves; if not, why not?

110 A. It is possible. It is not at all probable that you would find a committee that had the experience that would enable them to do it.

Q. You may state whether the time that would be required for such an examination in details and an intimate knowledge of accounts of various kinds is not such as to preclude such an examina-

tion by a committee composed of men having other business interests.

A. That is a hard question to answer directly. I should answer it in this wise: That gentlemen engaged in business would be obliged to neglect it in order to give such an examination as has been referred to.

Q. And assuming that they could take the time, I will ask you whether, without the knowledge and practice of expert accountants, they would be able to make such an examination?

A. The question I cannot answer direct. I don't know, sir.

Q. But you do know that it is the custom and practice of such committees to take the statements as prepared for them by the accountants and clerks as correct, and without verifying the results, do you not?

A. The fact, so far as I have known, is to ascertain whether the things purporting to be on hand are there.

111 Q. Corresponding with the figures presented in the paper?

A. The presentation of the schedule is the claim of what is presented. The verification of it is the presence of the document said to be there.

Q. The verification of the securities produced with the exhibit of the schedule made comprises the scope of the duty of the examining committee, does it not?

A. I should think that would depend upon the resolution appointing them very largely.

Q. The general, if there were no special, instructions given?

A. So far as I have had experience.

Cross-examination by E. B. SHERMAN:

Q. Do you intend to be understood as saying that among all this board of directors of eminent gentlemen, prominent business men here in the city, that a committee of three could not have been picked out that knew enough to trace those assets back and find out whether the company had ever paid for them or not?

A. I did not make that statement.

Q. You inferentially made statements from which Brother Bonney will adduce that conclusion.

112 A. Now, as regards these committees, I suppose that every man knows that book-keeping is somewhat of a science, and somewhat of a mystery, and a good expert accountant can fool almost any man, if he undertakes to: I am willing to be understood this much simply, that it is very difficult to find it an ordinary committee a man that has had sufficient practical experience in book-keeping, though he may be worth ever so much money, to manage a business that he may not be overreached by the entries upon books which he cannot understand.

Q. Suppose, Mr. Culver, that a committe is appointed to ascertain the condition of an insurance company, suppose the cash-book contains the actual cash paid out and the actual cash received during the year, or during the whole history of that company, does it take any scientific or expert skill, if you have in the report a statement

that a mortgage of $10,000 dollars was purchased on the first day of April, to go to the cash-book, or to the proper vouchers, and to ascertain whether the money was ever paid for that; could not any business man do that if he saw fit?

A. That is simple enough, sir.

Q. Now, on the theory that that was just exactly what the examiners did in this case to unearth Mr. Clapp's rascality,

113 were there not plenty of directors on that board that could have done the same thing if they had chosen to do it?

A. I have no doubt about that; it is not the practice among directors.

Q. You stated in answer to a question by Mr. Bonney, that you knew some cases where the examining committee simply took the schedules and securities and checked them off, and you knew of other cases where they went back to the vouchers which purported to represent the money; which practice do you think is the preferable one, and in which way do the examining committee perform their duty as trustees?

A. I think the attorney misunderstood me. In what connection was that?

Q. I understood you to say that you knew of cases where examinations had been made as they were made in this case, and you knew of other cases where they had gone further into the evidence?

A. You misunderstood me; I said that in banks an examining committee is appointed, who examine the cash on hand, the bills receivable, the checks and bills of exchange, &c., and if they are careful they count the money instead of taking the packages of money and calling it 5,000 and 10,000, &c.

Q. In that way they can tell whether the bank owns those securities?

114 A. No, sir; they cannot tell anything about it.

Q. When they go to the receipts and disbursements of cash on hand would it not be possible?

A. They don't go to them at all; they don't go to the receipts and disbursements. The cashier says at the close of business at night he has got so much exchange and so many checks, bills receivable, cash on hand in greenbacks and other currency, and in gold and silver, &c. Your committee take that out of his hands at once, instead of counting beforehand what is in possession of the bank, and verifying his books. They don't know where it comes from, and they don't care where it comes from; they don't look after that.

Q. You have testified here, as I understand, as an expert in matters of corporations?

A. No, sir; I disclaim any such position.

Q. Now, as a matter of fact, do you not understand that the trustees or directors of the company hold a relation of trust to the creditors of the company, and that as such they are chargeable with the utmost care in taking care of the assets of the company; is not that a fact?

A. May I say to you what I once said? I don't propose to be a director in anything unless I give some attention to it. My

theory is, that a director is a trustee, and is under similar obligation as though he had a written contract.

Q. Do you think, then, that a trustee, or a director, or an examining committee, has discharged his or their duty when they simply compare their schedule of assets with the assets as presented, without undertaking to determine whether those assets are the property of the company; that is, without going to the cash-book to find out whether they are or are not the property of the company?

A. I think they do; the business has been transacted in that way so far as I have had experience in the business.

Q. Then, if you have a secretary who is dishonest, the board of directors may discharge their whole duty to the public and carry on a business, and the company has been, for year after year, deceiving the public, but the directors have done all their duty; is that the way you mean to be understood?

A. No, sir; I don't mean to be understood that way.

Mr. BONNEY: I will ask you if the existence of a security payable to a corporation does not warrant an examining committee in concluding that the company paid for it, and it belongs to the company when the security harmonizes with the schedule produced?

116 A. I don't know what a committee is warranted in doing. If I was on that committee, I should conclude that it belonged to the company.

Q. And you would never think of tracing it through the cash, unless your suspicions were excited?

A. No, sir.

And hereupon the complainant introduced the following testimony:

The first report of George M. Bague, receiver of the company, containing an inventory of the assets which passed into his hands, was offered in evidence in behalf of the auditor, said report filed December 3d, 1877.

The report is objected to, on behalf of the company, as incompetent on the present issue.

It is received in evidence, subject to objection, for such use as may be deemed proper.

GEORGE M. BOGUE (recalled):

Question by Mr. SHERMAN:

Q. I will ask you to state whether or not that report made by you to the court, and filed in this cause, is a true and correct statement of the assets of the company as found by you when you

117 took possession.

A. Yes, sir.

It is understood that leave is given to the complainant to make up an exhibit, showing how far the so-called Clapp & Barry securities were used in making the annual reports prior to 1876.

CHARLES L. CURRIER, a witness called on behalf of defendant, being duly sworn, was examined in chief by Mr. BONNEY, and testified as follows:

Q. Please state your full name and occupation.

A. My name is Charles L. Currier; secretary of the American Insurance Company.

Q. How long have you been secretary of that company?

A. Since the 18th day of April, 1859.

Q. State what other insurance companies you have been connected with.

A. Well, I have acted as agent of the Ætna of Hartford, the Connecticut of Hartford, the Phœnix of Hartford; with the Chicago Life Insurance Company, as director. My name may have been used with some other companies during that time.

Q. How long were you one of the directors of the Chicago Life Insurance Company?

A. From its organization until its suspension of business.

118 Q. State whether or not you are familiar with its business.

A. Its early life I was; for the last three or four years, perhaps three years, I do not know how long, I was not familiar with its business, except in looking over its balances and reportsas printed?

Q. State whether or not you acted at any time as a member of an examining committee of the board of the company to inspect its securities.

A. I don't think I ever did.

Q. State whether you ever served on such committees for other companies.

A. I have never served on an examining committee; I have had charge of the American Insurance Company's affairs, and have been present when it has been examined by the auditor and superintendent.

Q. State whether or not you know, in general, what accounts are required to be kept in conducting the business of a life insurance company.

A. Well, just the accounts; I don't know that I would be able to state; they keep a premium account and stock account and agency account, advertising account, and account of expenses and income; those would be the accounts; I don't know that I can enumerate all the different accounts; they take in advertising and office expenses.

119 By the COURT: That is in the expense account, ain't it?

A. Yes; the income account would be your stock account, amount of capital account, and then your other sources of income might be interest account and premium account; I am not an expert book-keeper; I could not tell you just what accounts you might want to open.

Mr. BONNEY: State what it is practicable for an examining committee to do in examining the securities of a company and endeavoring to ascertain whether its affairs are in sound condition.

A. Well, the examinations differ very materially; perhaps to satisfy, such an examination as shall satisfy those examining would be my observation; sometimes an examination of a company may last two or three months, and sometimes it may last two or three days.

Q. Is it practicable for such a committee to examine the accounts in detail, or must they take the exhibits and results of various accounts as furnished them by the accountants in charge?

A. The auditor and superintendent has a right, or does, in some cases, examine in detail to show the in and out; others simply take the statements and check off the vouchers; some will go so far as to look up the title to every piece of property, real estate, and
120 its volume, and look up all the collaterals; in some examinations they do not go so far as that.

Q. State whether any one not an expert account[ant] is competent to make such a detailed and complete examination.

A. Well, for the purpose of taking the exact condition of a company, tracing the funds into the company and the expenses out of the company, I should presume that it would require an expert to do it.

Q. State whether you were present when, after the examination of the affairs of the Chicago Life Insurance Company by Maj. Wood, a proposal was made to reinsure the risks of the company; and, if so, what part you took in the proceedings.

A. I was present and took part myself in an attempt to get permission to reinsure the risks of the company.

Q. State whether you made that application yourself on behalf of the company.

A. I did; I first talked with Maj. Wood; I was out of town when I first was informed that Mr. Clapp had left, and I came immediately to Chicago, and on my way in, not knowing why Clapp had left, I tried to think what could be done, and I felt very strongly that we could reinsure, and had property to do so. I found
121 the condition of things as represented as soon as I got to the office, and my effort then was to see how much time we would have to get the company reinsured. My first talk with Mr. Wood was quite satisfactory, and I talked with the agents of the Northwestern Mutua lLife Insurance Company; also with this company here—the Republic, or United States, whatever it might have been called then.

Mr. SHERMAN: National Life?

A. National Life; yes. I talked with them, and I also saw Mr. Cronkrite and Mr. Currey, and all thought it would be practicable to get reinsurance upon the basis I proposed. Finding their time was limited—in fact, the intimation was that what was done would have to be done right away, if done at all—I proposed to the auditor, finally, that we would issue a blanket policy, covering the risks of the company, for the longest time he would grant. I thought that the character of the board of directors was such that, with an individual guarantee to any company, *that* we would make it all right with reference to rate in a short-term blanket policy on all the risks represented on the books. I think the character of those gentlemen was such that we could secure a policy for the risk, at rates to be agreed upon, and that we could adjust afterwards. I believed it was prac-
122 ticable. I first asked for ninety days, and we insisted that

they should give us sixty days, and finally we begged for thirty days. The auditor told me that had we made application before they had commenced to make the examination, he thought there would be no good reason why they might not allow us to reinsure or to take care of the company; but having found the company as they did, that the law obliged them to close us up.

Mr. BONNEY: By the auditor you mean his representative, Maj. Wood?

A. I mean the auditor, Mr. Needles, himself.

Q. That you made the application to?

A. I made the application in the office of the Chicago Life Insurance Company, after talking with Maj. Wood; I talked with Mr. Needles, the auditor, himself. This last conversation was with the auditor himself.

Q. The result was that he refused you any further time to arrange the affairs of the company?

A. He did, sir; that is, he pleasantly said he did not see how they could.

Q. What explanation, if any, can you make of the fact that when it was determined to apply for the appointment of a receiver the board of directors, of which you were a member, suggested names for such receiver?

123 A. Well; still hoping that we might take care of the company by reinsurance or otherwise, and not have it wrecked entirely, we had a choice in who should act as its receiver, believing that—being informed!—I was informed by gentlemen—I think it was a general impression when the receiver was appointed that still we might accomplish the reinsurance.

Q. State whether at the meeting of the board of directors at which that action was had it was not expressed and talked about; that if a receiver who would not be hostile to the company and disposed to destroy it could be selected, you would obtain leave of the court and effect a reinsurance or other adjustment of the affairs of the company?

A. It was decidedly understood, and believed and hoped at that time, and expected by me, and I think the balance of the board thought that that would be the ultimate result.

Q. State whether, so far as you know, or was expressed by the board of directors, there was any intention in such action to abandon the company to be wound up by the receiver?

A. There was no intention, I think; there was none on my part, and no belief that we had reached a point where the company was to be abandoned.

124 Q. And no such expression on the part of any other member of the board of directors?

A. Not that I heard; I heard none, and I think there was none.

Q. State what in your opinion was the value of the good-will of the Chicago Life Insurance Company, as an item of property, at the time of the appointment of the receiver.

(Objected to.)

The COURT: I don't see what it has got to do with it; but let it go in.

A. Well, it is hard to determine. The Chicago Life Insurance Company's name was—it had a very good name, and business could be done for it very easily. To get the company in that condition would cost the company a good deal of money—I mean its reputation; it had a very good reputation, so far as I knew. I suppose that the directors would have considered the good name of the company worth at least $100,000; I should, being an insurance man, rather than to take a new one and work up another.

Q. State whether such a business could be worked up by the expenditure of $100,000 for a new company.

A. No, sir; it could not at that time, nor since then, nor to-day, I think.

125 Q. Supposing a sale to another company of all the assets of this company after you had estimated the value of the property and the assets receivable of the company, what sum do you think should be added to that amount for the good-will to make up the sum which a new company could afford to pay for it as property? Would you add the sum that you mention to the amount of the real and personal property?

A. Why I certainly at that time should have supposed, and do now, that it was worth that sum if we were to sell it. If I was placing a price on the corporation and its good name, to sell it as I would sell a house and lot, or farm, I should suppose it would be worth $100,000.

Q. In addition to the real and personal property?

A. I should.

Q. What was the effect of the commencement of this suit and publication of the fact in the newspaper upon the value of that good-will?

A. Oh, the good-will of a company is very sensitive; at least it takes but little to destroy it.

Q. The effect would be to injure it very seriously, would it not?

A. Very seriously.

Cross-examination by Mr. SHERMAN:

126 Q. Mr. Currier, do you mean to be understood that it is practicable for an examining committee, or an examiner of an insurance company simply to take the list of securities and the securities and check them off; that that is all they are capable of doing?

A. Oh, no; I don't mean to say that.

Q. Now, isn't it a fact, that when an insurance company purchases a piece of property, say a mortgage, or a note secured by a mortgage, or any other valuable piece of paper, that if the books are decently kept, they show in the cash when it was purchased, and how much was paid for it?

A. Yes, sir.

Q. Do you think it would tax the resources of a business man, if

somebody handed to him a list showing what the securities were, and when they were bought, to turn to the cash and find out how much was paid for them; would that be beyond the ordinary capacity of a business men, with some knowledge of business and a little of book-keeping?

A. No, I don't think it would be beyond his capacity.

Q. Couldn't you, Mr. Currier, with your knowledge, have gone to a life insurance company and taken the list of securities and the securities, and traced them through the cash book and found
127 out whether they had been paid for or not?

A. I think I could.

Q. What length of time would it have taken you to have found out all about that?

A. Well, I am not an expert book-keeper, in fact, I am not a book-keeper at all, and it might have bothered me a good while on certain items.

Q. Well, you could have done it, couldn't you?

A. Well, after having learned the routine of the way in, I could have followed it in.

Q. Isn't it a fact that every insurance company, when they buy securities pay for them, and credit cash with the amount paid out?

A. Certainly they should.

Q. Would it have troubled you at all to have taken a security, and finding that it was purchased on the first day of April, 1876, say, to have gone to the cash-book and found out whether they had paid for it or not?

A. I don't suppose it would.

Q. Isn't that something that every ordinary business man could do?

A. Well, as I said before, I think any ordinary business man could make a good accountant if he knows the routine.

128 Q. Well, without being an accountant, couldn't a good business man, knowing the fact that this was bought and paid for at a certain time, go and take down the cash-book, and find out whether or not cash had been paid for it or not, without being a practical book-keeper?

A. Yes; I suppose he could after understanding that that was the way to keep books. One thing is as easy as another when learned.

Q. If you know how.

A. Yes, sir.

Q. Then it was perfectly practicable, was it not, for any auditing board or auditing committee of examiners to go into the Chicago Life Insurance Company and to have taken that list of securities, and then to have turned to the cash-book and verified three or four of them, or all of them, as the case may be, to ascertain whether or not the cash has been actually paid for them?

A. I cannot see why they could not.

Q. Then if they omitted, that they omitted to do something that they might, within a reasonable time, have done, did they not?

A. Well, that supposition is supposing a fact, the ability to do it; if they knew that was a duty, then they omitted a duty.

129 Q. You are familiar with the directors of the Chicago Fire Insurance Company?

A. I am, sir.

Q. Was there, or not, on that board of directors a dozen men that could have done just what I have enquired of you about, if they had seen fit to do it.

A. I don't know how many directors they had; I think there were only nine on the board; I think they were intelligent business men.

Q. And could have done that, in your judgment, at least some of them?

A. Yes; I think they were competent to do it.

Q. Now, you say you made application to the auditor for the purpose of reinsuring, and you say that he said to you if he had not already made an examination that he would have no hesitation in giving you some time to arrange your matters?

A. Well, he thought he would; it was a pleasant conversation.

Q. But, having made the examination, and it developing so bad a condition of affairs——

A. He didn't put it in that way; he had made the examination and the law said, "you shall proceed."

Q. Didn't he put it squarely on the ground that it had developed a very unsavory condition of affairs?

A. He did not; not to me; he said it was on the ground of

130 the technical ability to do it.

Q. Wasn't it stated and talked over between you and the auditor that this examination had developed a very unpleasant state of affairs; wasn't that talked between you and the auditor?

A. I do not know that it was; the simple fact of the difference between what he expected and what he found.

Q. He expected to find it a solvent and prosperous company, didn't he?

A. Certainly.

Q. And he found it in a very different state to that; wasn't that talked between you?

A. Our ability to correct it as a board of directors did not enter into *one* conversation; the question was whether we had a technical right to do it.

Q. Isn't it a fact that the application was made by Mr. Bonney on behalf of the company to this court for leave to perfect this very arrangement after the bill was filed, and the court refused it?

A. I don't know that it was so, but still I am not clear; I think that something was done; I think it was; but I do not know.

It is admitted by the counsel that an application was made on behalf of the company by Mr. Bonney for leave to make an arrangement for reinsuring the risks of the company, and

131 thereupon discharging the receiver, and returning the affairs

of the company to the board of directors, which was denied by Judge Williams.

Q. Now, you assume the good-will of this company to have been worth $100,000?

A. I certainly think that it would cost more money than $100,000 to have put another company in the same condition.

Q. Well, it did cost the public more than that to put this company in this condition?

A. Well, I think our losses of life were always paid promptly.

Q. When do you fix the time when the good-will of this company was worth $100,000; at what time?

A. At any time during the last year of its existence.

Q. Well, up to what time; when did that value cease?

A. Well, it ceased when the notice to the world appeared that the company was insolvent and had passed into the hands of a receiver, as I should suppose.

Q. Do you mean when the bill was filed?

By the COURT: When it was published to the world?

A. Whenever the public got to know it.

Mr. SHERMAN: Now, wasn't it published the morning after Mr. Clapp run away that he had run away, and the fact published to the world nearly two weeks before the bill was filed?

132 A. I think not.

Q. Are you sure about that? Wasn't it published in the daily papers here that Mr. Clapp had run away, and this deficiency in the securities had occurred?

A. Well, that was published, but I do not think—I think that it did not affect the stockholders.

Q. Well, I do not ask you what it affected; isn't it a fact that the condition of the company substantially as discovered by Mr. Wood, and the fact that Mr. Clapp had run away, and the fact that he had been tampering with the receipts of the company, published in the morning papers; the same facts that are now before the public; were they not brought out by articles published in the Tribune and Times a day or two after Clapp run away?

A. Well, I do not remember the article published. When I arrived in Chicago I found Mr. Wood, I thought, very friendly to the interests of the company.

Q. Confine yourself to my question, if you please. When did you first learn that there was any trouble about this company?

A. The first I learned of the nature of the trouble, that Clapp had gone, I received a notice by telegraph.

Q. From whom?

A. From my brother.

Q. He was also an insurance man?

133 A. He was in my office looking after my business.

Q. Where were you then?

A. I was in Freeport with my family visiting.

Q. Did you read the daily Chicago papers?

A. I do not know whether I saw them; I came immediately on after receiving the telegram.

Q. Where did you get these details?

A. What details?

Q. In regard to the state of the company, and in regard to Clapp's running away.

A. I came right to the company's office from the train.

Q. Well, if, as a matter of fact, it was published in the papers of this city, that Mr. Clapp had run away, and that there was a large deficiency in the assets of the company, and that the company was insolvent: what was the good-will worth after that, in your judgment?

A. I think it had not materially injured the good-will of the company provided—if I may explain myself—provided the stockholders had at once—provided there had been called a meeting. I do not think it would have hurt the good-will of the company materially.

Q. It would still be worth $100,000, in your judgment?

A. Well, if handled right, I think it would have been.

134 Q. Do you think that after the secretary had been convicted of that defalcation, which had been running on for years, and of which every director claimed to be in profound ignorance, until the company was deficient in assets of about $100,000—do you think that did not hurt its reputation at all?

A. I did not say that.

Q. Well, you say it could have been mended easily?

A. I think it would have injured it for a while, but I do not think it would have been material.

Q. Do you think any person would have insured in the company when not one of its directors or any officer except the secretary knew anything of the deficiency, when under the law of Illinois there was a deficiency of $100,000?

A. A satisfactory report from the insurance commissioner stating that the company was good, without an effort on the part of some insurance competitors or otherwise to have published this to the world, I do not think it would have been a permanent injury: with a certificate from our insurance commissioner of the amount of strength, and that he was satisfied, I do not think it would have materially injured the company's name: I may have been mistaken.

135 By the COURT: Well that is mere speculation of what would happen.

Mr. SHERMAN: I will produce here and attach as a part of the evidence one of the accounts that was published.

Mr. BONNEY: No; I shall object to you putting the paper in evidence, but it may be stated if it was a fact.

S. M. PARISH, a witness called on behalf of the defendant, being duly sworn, was examined in chief by Mr. BONNEY, and testified as follows:

Q. State your full name.

A. S. M. Parish.

Q. State whether you were in the employ of this company or connected with its business at any time; if so, at what time.

A. I was agent for Wisconsin seven years, I think; I think I began in 1870, and was agent up till the time the company suspended business.

Q. You were present this morning and heard the testimony of Mr. Currier in regard to the value of the good will of the company?

A. Yes, sir.

Q. State the value of that good will in your judgment.

A. It is a hard question to get at, but an agent, of course,
136 working in the field, can see at once that the good will of a company—that its business depends largely on the good will of a company, and, as it was stated here, I do not think that a company could be put in the position that company was, with the standing that company had through the country, for any $100,000; I should not put it less than $150,000.

Q. Do you mean to say that in case of a sale of all the assets of the company to a purchaser that you would add $100,000 to the amount of the real and personal property, as being a fair value of the personal property of the company and its assets?

A. I should; more than that.

Q. How?

A. I should not put it less than $150,000 for the good will.

Cross-examination by Mr. SHERMAN:

By the COURT: I suppose you mean by the good will before any damaging disclosures were made.

A. Yes, sir.

Mr. SHERMAN: Well, after the publication had been made in the Chicago papers that Clapp had run away with a hundred thousand dollars, what do you think the good will would be worth then?

A. Well, that would depend on what would follow.

137 Q. Do you think it would be worth $100,000?

A. Well, if the board of directors had made that good and the auditor had said that was satisfactory.

Q. And the auditor had concealed the fact that the secretary had run away, and that there was a deficiency of $100,000?

A. Well, I don't know that would have made much difference, if the board of directors had secured another secretary and made it good.

Q. Then you think after it had been published to the world that the company had become deficient of $100,000, without the slightest suspicion on the part of any of its officers or directors, except the secretary, and after an examination by the department had developed this state of things, and it had been published, do you think there could be any cure for such an attack on the company?

A. I think it would affect their business a little for a time, but I do not think it was anything permanent.

Q. Nothing permanent?

A. No; I should not think it would be.

Q. It would have been soon forgotten, and people would have had as much confidence in it as before?

A. Yes; you see, I have been in the field, and I have seen that several times.

Q. Do you recollect what the condition of the insurance
138 business was at that time—whether fixed or fluctuating?

A. Well, the business received a check in common with other lines of business.

Q. Isn't it a fact that the moment that anything was published against a company that it went to the wall without any help, and the public lost confidence in it? Isn't that the fact within your knowledge?

A. Well, it would affect the company, I say.

Q. Well, isn't it a fact within your knowledge that every insurance company reported deficient and found to be insolvent during 1877, that every company that was so reported went to the wall and failed, without any exception?

A. No; I can say that I don't remember.

Q. Do you remember of any exception to that rule?

A. Well, I think I do.

Q. Well, mention it.

A. I know life insurance companies reported unsound, that there was articles published about, that are now doing business; I know several; I might name the "Equitable."

Q. Those were reported deficient of some $150,000?

A. Well, more than that, and still that was made good, and those companies stand good to-day.

Q. Was the company made insolvent by the rascality of any one connected with it?

139 A. Well, I do not recollect exactly how that was.

Q. Was it made insolvent without the knowledge of any of its legal guardians?

A. Well, I do not know.

Q. Well, as a practical man, isn't it a fact within your knowledge that a company that was made insolvent by the depreciation of real estate, or by misfortunes which were connected with the panic, and *and* which was promptly made good as to its capital, could recover, but those companies made insolvent through the rascality of their officers or through neglect, which never have been made good, never have been made successful in business from that day to this?

A. Well, I could not swear to that; that would be a different effect.

Q. Well, that is it as a general rule?

A. That is the general rule.

Redirect examination by Mr. BONNEY:

Q. What do you think would have been the effect of an immediate reinsurance of all the risks of this insurance company in some confessedly good life insurance company?

A. Well, I do not think that would have affected the policyholders. I think that would be satisfactory.

140 Q. Would it not have the effect of supplying the alleged deficiency in security?

A. Exactly, sir: I know that in soliciting two or three years that argument is used: that in case of a failure of the company that the policy-holders would be reinsured in other companies; that is what they rely on in case of a failure.

Q. State whether, so far as you know, this Clapp business in any way affected the integrity of the other officers of the company.

A. Not to my knowledge.

Solicitor for the complainant introduced in evidence the petition of the Chicago Life Insurance Company, asking for leave to reinsure the risks of the company, filed July 20th, 1877.

Mr. BONNEY: If that is admitted I want to recall Mr. Currier.

Objected to.

By the COURT: Well, let him take the stand.

CHARLES L. CURRIER, being recalled on behalf of the defendants, was examined in chief by Mr. BONNEY, and testified as follows:

Q. You may state, Mr. Currier, whether, at the time of the appointment of the receiver, you and the other members of the
141 board of directors of the Chicago Life Insurance Company understood that you were to have his concurrence and the concurrence of Major Wood in carrying out your project of reinsurance, and thus making up the deficiency in the assets of the company.

Objected to.

By the COURT: Let him answer it.

Exception by solicitor for complainant.

A. I cannot say, as to making up the assets, whether the directors intended or desired——

By the COURT: At the time of the appointment of the receiver; that is the time fixed by the question.

Mr. BONNEY: Did you then expect the concurrence of the receiver and Major Wood in carrying out your scheme of reinsurance?

A. Yes; at that time—I think you mean at the time of the petition?

Q. No.

A. Yes, that was embraced in this; there was no company named, but if he had named any company in the United States, I would have consented to it.

Q. State whether your naming a person to be appointed as a receiver was with the express view of having his express concurrence in this scheme of reinsurance.

A. Yes, sir; it was.

Mr. HIGH: Do you mean that you had any assurance from
142 the receiver that he would co-operate in this scheme of reinsurance?

A. I think we did; that is, not after appointment, but before the appointment; I think I did; I do so understand it.

Q. Did Mr. Bogue, at any time before or after his appointment as receiver, say to you anything about his co-operating with you in the matter of reinsurance?

A. Yes; what he said I cannot say, but the impression on my mind is, that he did; I knew him very well, and he knew my desire exactly; he knew personally what I wanted.

Mr. BONNEY: And he did not express any opposition to it, or anything to oppose it?

A. I do not think he did.

Mr. HIGH: Did he express any assent to it at any time; if so, what did he say?

A. I cannot say that; it is so long ago; but he understood me, and he knew that was my desire.

Q. Don't you mean to say that he perhaps knew that you wanted to reinsure, and neither opposed or consented to it, leaving that to be determined by the court on the filing of the petition?

A. I do not think Mr. Bogue had a different view of the
143 matter at all; he was not hostile at that time, and I think now that he was not hostile to the scheme of the directors.

Q. But simply remained neutral?

A. Yes, sir.

Mr. SHERMAN: He was willing to carry out any arrangement that the court wanted to have carried out?

A. Yes, sir.

The foregoing and the documents therein specified comprise all the evidence offered on the hearing of this cause.

Mr. SHERMAN: I ask to have stricken from the record all the testimony that pertains to the scheme of reinsurance of the risks of this company in any other company.

2d. All relating to what examination could or ought to have been made by any committee or examiners of the company and its affairs.

3d. All the testimony relating to the knowledge of the directors or any of them as to the condition of the company.

4th. All that relates to the subject of the value of the good will of the company.

By the COURT: Well, if I decide in your favor and strike it out, it might be error; but as it is, I will allow it to remain in, and let you argue the effect of it.

144 To which ruling of the court solicitor for the complainant then and there duly excepted.

And thereupon the defendant, by its counsel, for the purpose of introducing into the record and preserving therein the legal grounds upon which it rests its defense, and particularly the provisions of

the Constitution of the United States upon which it relies in this case, made and submitted the following motion and reasons for a decree in its favor, to wit:

Refer to No. IX in *Præcipe*.

And thereupon the court took said cause under advisement, and having fully considered the same, afterwards, to wit, on or about the 2d day of July, A. D. 1881, rendered a decree therein in favor of said auditor and against said company, which said decree appears at large in the records of the court.

And thereupon the said Chicago Life Insurance Company prayed the court to sign and seal this certificate of evidence and exceptions, which is accordingly done.

M. F. TULEY. [SEAL.]
Judge Cir. C't, Cook Co., Ill's.

145 STATE OF ILLINOIS, }
County of Cook, } *ss:*

In the Circuit Court for said County. In Chancery.

THOMAS B. NEEDLES, Auditor of Public Accounts of the State of Illinois,

v.

CHICAGO LIFE INSURANCE COMPANY.

For injunction and receiver to close up said company.

Appendix to certificate of evidence, showing the documents introduced in evidence at the hearing, as appears in said certificate, abbreviated pursuant to the stipulation set forth in said certificate.

First, A. The auditor's direction to Robert M. Woods to examine the company.

Defendant's counsel waives its production, as unnecessary.

Second. Report by Robert M. Woods of his examination.

The copy appended to the auditor's petition is admitted to be correct.

Third, B. Report of the company to the auditor for the year ending Dec. 31, 1876, filed in his office M'ch 12, 1877, showing, among other things, the following items:

146 That the amount of capital stock paid up in cash was $125,000.

That no capital stock was subscribed and unpaid.

That the total income was $152,922.37 for the year 1876.

That the total disbursements for the same year were $161,140.64.

That the total assets of the company, as per its books, were $367,510.95.

That the present value of outstanding policies in force December 31st, 1876, computed according to the actuary's table of mortality, with 4 per cent. interest, was $339,686; and its net insurance re-

serve, after deducting the net value of risks reinsured in solvent companies, was $337,479; its total matured policy claims were $6,000; its gross surplus on policy-holders' account was $24,631.95; and its total liabilities 343,478 dollars.

That the number of policies in force in Illinois at the beginning of the year 1876 was 798, amounting to $923,187; that the number in force at the end of 1876 was 663, amounting to $890,714.

Also that the securities specified in the evidence as the Clapp & Barry securities were listed in said report as the property of the company.

147 Fourth, C. Duncan Campbell's statement of the receipts and disbursements of the company, as explained in his testimony.

Chicago Life Insurance Co., 4, 19, '81.

Period ending—	RECEIPTS.			DISBURSEMENTS.		
	Per company's books.	Per sworn statement.	Discrepancy.	Per company's books.	Per sworn statement.	Discrepancy.
December 31, 1871	140,885 36	149,972 62	9,087 26	107,316 11	115,628 52	8,312 41
Do. 1872	169,809 08	178,931 48	9,122 40	148,492 53	144,519 13	3,973 40
Do. 1873	162,643 27	174,268 27	11,625 06	159,899 91	141,095 81	18,804 10
Do. 1874	160,189 04	189,409 93	29,220 89	143,387 77	154,549 91	11,162 14
Do. 1875	150,872 94	177,025 08	26,152 14	129,101 52	139,140 40	10,038 88
Do. 1876	143,123 60	152,922 37	9,798 77	151,430 13	161,140 64	9,710 51
	927,523 29	1,022,529 75	95,006 46	839,627 97	856,074 41	39,223 94
		927,523 29			839,627 97	22,777 50
		95,006 46			16,446 44	16,446 44

148 Fifth. D. Duncan Campbell's statement of dividends paid to stockholders between August, 1871, and February, 1877, in substance, as follows:

To D. Boyle	$1,050	00
" J. W. Clapp	8,276	25
" C. H. Cram	157	50
" J. H. Currier	315	00
" C. L. Currier	1,377	50
" H. Z. Culver	450	
" Wm. E. Daggett	393	75
" J. Friedman	2,430	
" E. Frankenthal	2,430	
" S. Florsheim	925	
" D. Goodwin, Jr	270	
" M. A. Hoyne	450	
" H. A. Hurlbut	157	50
" H. N. Hibbard	900	
" R. N. Isham	1,150	
" H. W. King	157	50
" Geo. P. Lee	157	50
" J. H. McVicker	1,980	
" Sam. M. Nickerson	650	
" B. W. Raymond	450	
" J. B. Sherman	1,350	
" L. Snydacker	1,125	
" G. Snydacker	1,125	
" M. Snydacker	1,125	
" John Tyrrell	2,545	
" W. F. Tucker	18,465	
" R. C. Treat	2,250	
" Edward Voss	1,125	
To W. F. Wentworth	1,650	00
149 " D. L. Wells	157	50
Total	$55,045	00

Sixth. Report by John J. Brinkerhoff, actuary of the State insurance department, of his valuation of the policies of the company, made as stated in the deposition of George M. Bogue.

Said report sets forth in substance that on the 26th day of October, 1877, George M. Bogue, as receiver of said defendant, filed his petition in the said cause, setting forth the nature and extent of the policy liability of said company at the date of his appointment as such receiver, and asking the direction of the court in regard to the mode of ascertaining the value of such policy liability at the time of his appointment; that a reference was taken to a master and evidence taken, and the same reported to the court.

That thereupon an order was entered in the said cause on the 31st day of October, 1877, directing said receiver to ascertain the net present value of each of the policies of the said defendant company

upon the basis of the American table of mortality, with interest at the rate of 4 per cent per annum upon the basis of net premiums. That pursuant to said order said receiver caused to be made a schedule of all the said policies, with the respective valuations thereof,
150 attached thereto, to the correctness of which valuations the actuary of the Illinois State Insurance Department attached his certificate, and that such report was filed in the said cause on the 30th day of March, 1878. That said report shows that the amount of insurance by policies in force July 7th, 1977, was $2,646,818.84; the gross surrender value was $345,903.90; liens, $25,889.91; and the net surrender value was $320,013.99. That the same report showed that the unpaid death losses at the time of the appointment of a receiver to be $14,800. That subsequently, on the —— day of ———, 1878, said report was approved by the court; and that subsequently an order made directing the receiver to pay a dividend of ten per cent. to the the policy-holders of said company upon the amount of their claims as fixed by such valuation.

This evidence was specially objected to, because the proceedings were taken without notice to the company, and no such notice was shown in the case.

Seventh. Extracts from the record-book of the company, introduced, as stated in the certificate of evidence, at the close of the testimony of George M. Bogue.

It appears from said extracts, in substance, that as said record-
151 book shows on pp. 113 and 114, the regular annual meeting of the stockholders was held January 16, 1877, at which was submitted the annual report of the condition and affairs of the company for the year 1876; that the same was referred to the finance committee for examination; and that on February the 20th, 1877, the finance committee reported to the board of directors at a meeting thereof, as shown on pp. 115 and 116 of the record-book, that they found said annual report in full accord with the books; and that they had taken particular care in the examination of the assets, as shown by the books at the close of business on December 31st, 1876.

Said report, in printed form, is pasted upon p. 114 of the said record book, and sets forth that the receipts during the year 1876 were $152,922.37; disbursements, $161,140.64; assets, $368,510.96; liabilities, reserve on policies in force, $264,155.00; claims by death, not due, $6,000; total, $270,155.00; policies issued during the year, 786; amount of same, $914,667.00; total policies in force, 2,605; amount of same, $3,019,659.

The finance committee report—

Bill receivable, secured	$201,150 51
Auditor's receipt for securities	101,460 00
152 Cash	4,896 56
	$307,507 07

Also, that of the bills receivable, $13,700 of principal, and $1,440

of interest, are due and unpaid, which, in view of the times, and the amount loaned, they think a very satisfactory showing.

(Signed) SAM. M. NICKERSON.
GODFREY SNYDACKER.
W. F. TUCKER.

Said record also shows that at a meeting of the directors held at the office of the company after the secretary had absconded, on the 5th day of July, 1877, as appears on pp. 123 to 131 of the record-book, and after the auditor, through his counsel, upon the advice of the attorney general, had declined to delay proceedings for the purpose of allowing the company to attempt a reinsurance, after reciting such refusal upon the record, the following motion was adopted:

"That Daniel Goodwin, Jr., be recommended to the court as the choice of this board for the position of receiver;" and also, "That if Daniel Goodwin, Jr., be not appointed by the court as receiver, that George M. Bogue be the second choice of the board for that position."

153 Said record also shows that article 19 of the by-laws of the company, as given on page 18 of the record-book of the company, is as follows:

"The board of directors may declare dividends, but all dividends shall be applied in payment of the capital stock subscribed until the amount subscribed by each shareholder shall have been paid up in full by the dividends declared upon the stock, and so of the capital stock subscribed from time to time."

Said record also shows that at a regular meeting of the board of directors of the Travellers' Insurance Company, held March 29th, 1867, as appears on page 27 of said book of records, a quorum being present, a motion was made and carried, as follows:

"That hereafter the amendment to the charter of the company be adopted; and that hereafter the company be known as Chicago Life Insurance Company, but that all contracts previously made by the company under the old name of Travellers' Insurance Co. be considered valid and binding upon the Chicago Life Ins. Co."

Eighth. First report of George M. Bogue, receiver, introduced in evidence, as stated in the certificate of evidence, at the close of the testimony of H. Z. Culver.

154 Said report shows in substance that George M. Bogue, receiver of the said defendant, on the 3d day of December, 1877, filed his first report as such receiver; and that in and by such report it appears that he qualified as such receiver July 9th, 1877, and immediately entered upon his duties and took possession of the assets of the company; that said report shows that the assets of said company, July 7th, 1877, were of the value, as estimated by said receiver, of $212,338.06.

Ninth. Exhibit showing how far what are called the Clapp & Barry securities were reported to the auditor in the annual reports as the property of the company. Said exhibit, prepared by George

M. Bogue, the receiver, under leave granted as stated in the certificate of evidence, is as follows:

Description of security as per books of the company.	Year 1873.	Year 1874.	Year 1875.	Year 1876.
78 A	3,500	3,500	3,500	3,500
92 A	3,500	3,000	3,000	3,000
93 B		3,000	3,000	3,000
94 A		3,000	3,000	3,000
94 B		3,000	3,000	3,000
95 A		3,000	3,000	3,000
95 B		3,000	3,000	3,000
		21,500		
155 99			2,500	9,500
100			2,500	
102 B			2,000	
103 C			2,000	
104 D			2,000	13,402
105 E			2,000	
106 F			2,000	
107 B			2,000	
109			3,000	3,000
111 A			2,500	9,820
112 B			2,500	
113 A			2,000	
114 B			2,000	6,000
115 C			2,000	
116			2,500	2,500
117			2,500	2,500
119			2,500	2,500
120			2,500	4,500
121			2,000	
127 A			4,000	4,000
128 B			4,000	4,000
129 C			4,000	4,000
132				2,500
			76,500	89,422

156 Tenth. Statement showing that, June 30, July 1, and July 2, 1877, articles were published in the Chicago daily papers, stating that Clapp, the secretary of the company, had absconded, leaving the company in a bad pecuniary condition.

The following examples of such articles were offered by the auditor's counsel:

An article was published in the Chicago Daily Tribune of June 30th, 1877, of which the following are the head-lines:

"Chicago Life. Clapp, its secretary, departs for parts unknown, taking over $100,000, and absolutely gutting the concern. Uncommunicative officers and ignorant servant girls. Alleged insanity of Clapp."

The article says, in substance: That it had been stated in the street on the day previous that John W. Clapp, secretary of the Chi-

cago Life Insurance Company, had *bail* abruptly left town, taking with him all the get-at-able assets of that insignificant and obscure concern. An investigation shows that Clapp had gone, no one knew where, nor why, nor how much he had taken. He cannot have been very successful in his foray upon the company; that the company had been organized in 1867 by W. F. Tucker as president and Clapp as secretary and actuary, and as such he (Clapp) had
157 been running the company. The defalcation, though the company is small, is of no slight consequence, since it figures above $100,000. Those who know most, and should be most willing to talk, refuse any information. Tucker is president and the largest stockholder, holding about one-half of the stock, which is $125,000. Sherman, his partner, holds $3,000, and Nickerson, the president of the First National Bank, is interested. No information could be obtained by the reporter from Tucker. The company was in great trouble last year. Rumors at that time connected Clapp's name with no honorable transactions. On an investigation, the committee were blinded by Clapp, and he was vindicated and retained. Tucker never bothered himself about the company, and had unbounded confidence in Clapp. He thought everything was all right after Clapp was vindicated. The company did a desperate business—paid ruinous rates for business, and the income was light, and they had to keep up appearances in the office. They had control of the money, and thought they could make something by speculation. Its total assets are about $400,000, including $125,000 capital stock. About $290,000 was supposed to be in bonds and mortgages. It had about
158 800 policies in force, and about $1,000,000 in force in Illinois. The capital is all eaten up, and Clapp is said to have lost $111,000 in speculation, and about $50,000 of this on the Board of Trade. The Tribune will not vouch for the statements, because those who know the facts will not give information for the benefit of the public and the policy-holders. Tucker will lose about $50,000, and others various sums. If the policy-holders find 15 per cent. of their resources, they will be very fortunate. The company has been very weak from the beginning, and its secretary has hastened its demise by robbing the stock and policy-holders of almost the last farthing.

An article appeared in the same paper, July 1st, '77, stating, in substance, that matters were not as bad as at first reported; that Clapp's deficiency only appeared to be $8000, and so smart a man would not run away for that amount; and what misappropriation there was remaining in the background was yet to be discovered. The books are all right; the loans and securities are all accounted for, and some of the personal securities of Clapp were left behind. It will take about $250,000 to reinsure its 1,800 policies; the stock of the company is all used up, not by speculation, but by unprofitable business; it is impossible to say how much the assets will be
159 cut down, no statement yet having been prepared; the company, though doing a small business, have a remarkable good line of risks, and they could easily be reinsured if the money was forthcoming; the gentlemen at present connected with the

company are honorable men and will do all they can to prevent loss to the policy-holders.

On July the third, an article appeared in the same paper, stating, in substance, that if the company could not straighten things up by Thursday, it must shut up. The Chicago Life Insurance Company commenced business in the ordinary method of — by the stockholders subscribing for stock and giving their notes for the amount subscribed and then drawing dividends. From 1870 or '71, the company had been paying dividends (semi-annual) of five per cent. to its stockholders, and, until 1873, it went on swimmingly; then commenced the tug of war; bad debts, competition, and bad management began to tell; but loss of business mattered nothing, for the stockholders got their dividends of 10 per cent., and Clapp got his $6,000 salary. From year to year statements were cooked up by the order of Clapp, and the policy-holders were kept in blissfull ignorance of the true state of affairs. For something like three years, this concern ran along in this same rut of fraud, and its stockholders were kept in ignorance of its true status. It seems, from a
160 statement by Maj. Woods to its board of directors, that the total admitted assets are $211,695.07, and total unadmitted assets, $9,820; that its liabilities are $345,856.30; that there is an impairment of its assets upon the 4 per cent. reserve of $134,160.58; this impairment on the 6 per cent. basis is $60,205.08. The above shows anything but a healthy state of affairs. The company is now making efforts to reinsure its risks, and, it is said, has received a proposition from the National Life, which is said to be a safe company. It will take more than the present assets to reinsure the risks on the basis of 4 per cent. The secretary has not abstracted the assets, but has left through fear of indictment for swearing to the annual cooked-up statements which were taken by the State department as being perfect and correct. In these statements are included securities belonging to other parties, which Clapp had in his hands as trustee. Clapp went on in his schemes with no one to check him until he made the wreck complete.

Eleventh. The petition of the company for leave to reinsure its risks, filed in this cause July 20th, 1877, said petition, and the proposal therein specified, are in substance as follows:

Said petition represents that *that* at the time of the fil-
161 ing of the auditor's petition there were pending before the board of directors of said company proposals on behalf of the National Life Insurance Company, U. S. A., for reducing the liabilities of the defendant, and ultimately to reinsure or otherwise extinguish or provide for the remaining liabilities of said company, and receive in consideration therefor the assets of said company, a copy of which proposal is attached to said petition; that the proposed plan was in general approved by the auditor's examiner and actuary, but the auditor doubted his authority in the premises, and refused to delay on account thereof; that the proposition still stands, has not been withdrawn, and can be carried into effect with approval of this court, and it is the opinion of said examiner and actuary and petitioner that under some such plan the policy-holders would real-

ize double what they will receive in dividends under a compulsory conversion of the assets; that nearly all the policy holders desire new policies, and if a satisfactory arrangement cannot be made with the National Life Insurance Company, petitioner believes that some other responsible company will make such an arrangement; that the company, on the completion of the auditor's examination, suspended business, placed their securities in safe keeping, and
162 surrendered them to the receiver on his appointment, and do not intend or desire to transact any new business; that it is important that the company be allowed to act concurrently with the receiver, under the direction of the court, in closing up the affairs of the company, and that it have the assistance of the secretary *pro tem.* and its counsel, in order that the business of the company and the winding up of its concerns may not be left wholly to the management of persons hitherto unacquainted with its affairs.

Wherefore the petitioning company prays for leave to negotiate with the National Life Insurance Company, or any other party, for such an arrangement as set forth, but not to be carried out without the approval of the court when perfected; that the company might have leave to continue the service of their secretary and counsel in this behalf to act concurrently with such receiver in the settlement of the affairs of the company, their proper compensation to be allowed by the court and paid out of the assets of said company in due course of administration.

A hearing was had on the foregoing petition, and an order entered by the court overruling the same, and refusing to grant the relief prayed or any part thereof.

The following is an abstract of the proposal mentioned in said petition:

163 The proposition referred to in the foregoing petition is dated July 3rd, 1877, was made by E. W. Peet, and purported to be suggestions relative to a possible plan of which the Chicago Life might be liquidated without going into the hands of a receiver, and was not to be considered a proposition and binding on the National Life, and whether it assented to its terms would depend upon the character of the assets, the number, kind, and character of the policies, premium, income, &c.

The plan provides for an arrangement, or rather an alliance, between the Chicago Life and the National Life, the Chicago Life to be prohibited from issuing new policies except such paid up as were required by the terms of their policies; to cut off all possible expense, discontinue agents, retain but one or two clerks, and pay all necessary expense, collect the premiums directly from the insured, and refuse to pay to policy holders any cash or surrender value, to issue paid-up policies in lieu of running policies only when the original policies are strictly complied with. When the amount of paid-up policies is not fixed, it need not be more than the amount of insurance that can be purchased at a gross single payment by half of the six per cent. reserve, which would not
164 be unfair, as it could be demonstrated that they were equita-

bly entitled to no more by the terms of the policies; the Chicago Life to give the National Life a list of policies in force, or a transcript of the same, and access to the original applications; the Chicago Life to encourage and advise such policy-holders to accept the terms offered by the National Life; the National Life by its own agents to induce policy-holders of Chicago Life to accept its policies in lieu of Chicago Life's; The Chicago Life to assign the original policies to the National Life; the National Life to send skilled special agents of character and integrity to each policy-holder, and by truthful representations show them that it is for their interest to accept the National Life policies in exchange for the defendant's, (Chicago Life); in many instances new policies can be written at the same rate of premium as now paid, in some at slightly reduced or increased, generally the substitute policy to give nearly the same advantages to the insured as he now has at nearly the same rate; the National Life do this for two reasons; *first*, to receive as compensation a part of the reserve; and, *second*, because the premium rates of the Chicago Life are higher than those of the National
165 Life; Chicago Life to pay to the National Life in cash or acceptable securities, 70.65 or 60 per cent. of the 6 per cent. (as hereafter agreed) reserve for policies assigned and surrendered; settlement to be made monthly or at convenience; if the National declines to substitute policies by reason of the life being impaired, or any other reason it will purchase policy for cash for such price as it can agree upon with the holder, and will pay as high as 90 per cent. of the 6 per cent. reserve if necessary to secure assignment, and if the basis referred to in the preceeding paragraph is 70 per cent. it will pay as high as the full 6 per cent. reserve, and will surrender such policies to the Chicago Life on such basis, and if the National Life purchases for less than the basis provided for, to receive the same percentage as though it was paid in full, the agents of the National to receive positive instructions to settle with every policy-holder; statement of facts endorsed by Chicago Life and by auditor will enable agents to settle with every policy-holder they find; if necessary the National to cover risks with a blanket policy for 6 months, charging net cost loaded $\frac{1}{3}$ to $\frac{1}{2}$, as agreed upon, charging for time and trouble; the rates required probably would not be more than one-half of the premiums received by the defendant
166 upon such policy; when policy-holder dies proof of claim to be sent to Chicago Life, and, if accepted, then to be submitted to the National Life, and, if accepted by it, the amount to be paid by it through the Chicago Life; blanket policies probably would not be needed more than 6 months, and perhaps not 3, as the insurance would diminish constantly and the premiums paid would not be more that 3 months' premiums on all the insurance; 6 months would be ample time to carry out the scheme, but if not the National might renew the blanket policy for 6 months longer on same terms, increased to correspond with increased age; when liabilities are reduced so that Chicago Life has 4 per cent. reserve on the remaining policy-holders all the residue can be rein-

sured and the Chicago Life wound up; if the National Life should reinsure, it might take an assignment of the securities on deposit at Springfield, provided the auditor would credit the National Life, and, if found to be interest-bearing securities and satisfactory to the National Life and the auditor, to deliver to the National Life any excess over insurance in force under Chicago Life; probable within 6 months there will be 4 per cent. reserve for remaining policies; if, because of the impairment of lives or other reason, the Na-
167 tional Life or other companies decline to reinsure the remaining risks for the remaining assets, then the Chicago Life could be put in the hands of a receiver, and the remaining policy-holders would then receive more than without this scheme; the auditor could have general supervision and inspect the plan and see that the remaing policy-holders were in no worse condition than at present; fuller details could be elaborated hereafter; the advantages of the plan are many and evident; it is desirable to keep the Chicago Life out of the hands of a receiver, and the policy-holders would be able to keep their insurance as most of them desire, and in all cases they would receive more than they would hope to secure from the receiver in insurance or in cash; it might be a hardship for the makers of securities of Chicago Life to pay in full at once, while if the securities were good, and the interest and taxes paid promptly, the National Life would not care to realize until the maturity, and they might extend thereafter; the plan could be carried out if, on an examination of the securities and risks, it was found safe for the National Life to undertake; similar plans have been carried out by the National Life in 3 other cases, and resulted more satisfactory to the policy and stockholders than could be attained
168 in any other; in the first, the Commonwealth, twice as large as the Chicago Life; a similar plan was approved by the superintendent of N. Y., and in 15 months the holders of three and one-half millions of insurance were satisfactorily settled with, the remaining half million reinsured. The Iron City, of Pittsburgh, adopted a similar plan, which was approved of by the insurance department, and it was carried out, and nearly all the policy-holders satisfactorily settled with; and it had assets enough remaining to cover the rest of the policies. The plan was not well matured in the Teutonia case of Chicago, nor properly managed; but many policy-holders were settled with, and the remaining received larger dividends than otherwise; the National Life would not expect much profit, but would hope to derive profit from new business thus secured at small expense in a short time; and it desires further to save the Chicago Life from the disgrace and discredit which a failure would entail; to make this plan successful the auditor's department, the stockholders, directors, and principal policy-holders of both companies must endorse it and heartily co-operate.

All the foregoing documents were offered in evidence by
169 said auditor's counsel, and were received by the court under objection by counsel for said company, and subject to all just

exceptions to be made and argued on the hearing of the cause, without any more particular specification or repetition.

E. B. SHERMAN,
Sol'r for Complainant.
C. C. BONNEY,
Sol'r for Defendant.

170 *Motion of Company for Decree at Hearing.*

STATE OF ILLINOIS, }
Cook County, } *ss:*

In the Circuit Court for said County. In Chancery.

THOMAS B. NEEDLES, Auditor of Public Accounts for the State of Illinois,

vs.

THE CHICAGO LIFE INSURANCE COMPANY.

Petition for receiver, injunction, etc.

Motion of defendant for decree at the hearing upon the merits, at the April term, A. D. 1881.

This cause having been heard upon its merits, upon the petition of said auditor and the answer of said company thereto, and the evidence produced before the court by the respective parties, and having been argued by counsel, the said Chicago Life Insurance Company moves the court here to find, order, adjudge, and decree that the said auditor hath not made or established any such case against said company as doth or ought to entitle him to the relief which is sought in and by his said petition, but that the equities of the cause are with the said defendant, upon the pleadings and the proofs aforesaid.

And the said defendant also moves the court to further order and adjudge that this cause be retained for such further proceedings in furtherance of justice as may be found expedient, with leave to the said defendant to apply to the court for such orders and decrees in relation to the injunction heretofore granted, and the receiver heretofore appointed herein, or otherwise, as said company may be advised, etc.

171 *Points in Support of the Foregoing Motion.*

1. The evidence clearly shows that the company was not in such a condition as to render its further continuance in business hazardous to the insured therein at the time of the filing of the auditor's petition.

2. The evidence clearly shows that the company was in fact solvent, on the American or commercial basis, as stated by the auditor's examiner.

3. The evidence clearly shows that the company had assets at the time of filing the petition, exceeding in amount the reserve required by law, even on a 4 per cent. basis.

4. The evidence clearly shows that said company, at the time aforesaid, had the ability to proceed with its business and accomplish the objects for which it was incorporated, and that its directors were urgent so to proceed.

5. The evidence clearly shows that the alleged impairment of assets and the alleged mismanagement of the affairs of the company is apparent rather than real; and that the tables of figures elaborately and skillfully made up to show such deficiency and mismanagement do not rest on sound principles of business, or of finance, or of law.

172 6. The evidence clearly shows that at the time of filing said petition, the company did not actually owe more than eight thousand four hundred dollars ($8,400). It also shows that the alleged impairment of assets, if it in fact existed, which is denied, arose only after several years of decline in values and business, following the financial panic of 1873; and that if the company had been left in charge of its own affairs as the law authorized and required, it would now be in a prosperous condition.

7. Neither the stockholders of said company nor the board of directors thereof have at any time been guilty of any willful neglect, default, or violation of law in or about said business; and said company is not, nor ever has been, guilty of any act, matter, or thing for which the affairs of said company ought to be wound up, or the franchises thereof forfeited, or the body thereof dissolved.

8. All the alleged losses and deficiencies of the assets of said company which are charged and claimed in the report of the auditor's examiner, which is referred to in said petition and made part thereof, if in fact any such losses and deficiencies have occurred in the assets of said company, were caused solely by the secret fraud and mismanagement of the secretary of the company without the knowledge or concurrence of the board of directors thereof, or of the stockholders of the same.

9. The previous non-discovery of the alleged fraud and misconduct of said secretary is as well chargeable to the neglect and default of said auditor in failing to make more careful exami-

173 nations of the affairs of said company as to any neglect and default of the stockholders and directors thereof. And said fraud and misconduct were of such a character that the same could not have been discovered and prevented by the exercise of the ordinary care and diligence required of directors of such corporations, but could be detected only — a long-continued examination of the affairs of said company by professional experts.

10. As soon as said alleged impairment and deficiency of the assets of said company had been discovered, the directors of said company proposed to said auditor, by and through his said examiner, who was then in the principal office of said company, and had assumed the charge thereof, that they would effect, without any delay, a reinsurance of all the outstanding policies of said company in any good and solvent insurance company that said auditor or examiner might designate, which proposal on the part of the directors was nevertheless refused by and for said auditor. And in and by

said offer to effect such reinsurance the said Chicago Life Insurance Company did, in contemplation of law, then and there make up and restore all and any deficiency of the assets of said company then alleged to exist, and thereupon, if not before, said company became and was fully entitled to resume and prosecute its said business, without any interference or hindrance on the part of said auditor, on account of said alleged deficiency of assets or otherwise.

11. Even if, through the secret misconduct of said secretary, there existed a deficiency of the assets of said company, said company had the right to a reasonable and convenient time and opportunity to make up such deficiency; and it did in fact make good
174 such deficiency by the offer of reinsurance aforesaid; and said petition was so filed by said auditor, and said receiver appointed and said injunction awarded, without any complaint on the part of any creditor of said company, or of any other person interested therein, that said company had failed to meet and discharge any debt or obligation against it, or had been guilty of any violation of any contract into which it had ever entered. Wherefore, all the proceedings of said auditor and of the court upon his said petition were and are manifestly contrary to law and equity, and to the rights of said Chicago Life Insurance Company, under its specias charter aforesaid.

12. The pretended examination of the affairs of said company, to which said petition refers, and which is made part thereof, constitutes no ground for proceeding against said company, as is attempted in and by said petition.

Said petition does not show that said company is in fact insolvent. There is no averment of any unpaid debt. There is no averment of any violated contract.

Said petition does not show that the condition of said company is in fact such as to render its further continuance in the business hazardous to the insured.

13. Said petition doth not show that the assets of said company were, at the time of the filing of said petition, in any danger of loss or misapplication by reason of anything then being done or threatened by said company.

14. The statute specified in said petition doth not authorize any proceeding against any company engaged in the business
175 of life insurance, but is intended to apply exclusively to corporations engaged in the business of fire insurance.

15. The said Chicago Life Insurance Company is a corporation created and existing under a special charter granted by the Legislature of the State of Illinois, and consisting of two public laws, approved February 16, A. D. 1865, and February 21, A. D. 1867, respectively, and said petition doth not show any willful and persistent violation of any duty imposed on, or right granted to, said company by said Legislature in said special charter.

16. Said petition is founded upon an allegation of said auditor that the condition of said company is such as to render its further continuance in business hazardous to the insured therein, as specified in the act for the dissolution of insurance companies, approved

February 17, A. D. 1874, and the examination to which said petition refers manifestly sets forth as a cause of proceeding against the company the supposed fact that its funds had fallen below the net value of its policies on a 4 per cent. basis, as specified in section 10 of the statute of life insurance of this State, approved March 26, A. D. 1869; but the special charter of said Chicago Life Insurance Company in effect forbids any proceeding against said company for any such cause as is set forth in said petition.

17. In so far as said act for the dissolution of insurance companies purports to authorize any proceeding for any supposed hazard to the insured, or to the public, said act is void for uncertainty.

176 18. As construed to warrant the proceedings against said company, and against these respondents as persons interested therein which are sought in and by said petition, and which have been had and taken under the same by the court in this case, said act in regard to the dissolution of insurance companies and said statute of life insurance are, and each of them is, unconstitutional, null, and void, in this to wit:

(*a*) They impair the obligation of the contract between the State and said insurance company, and the obligation of the contracts between said company and its policy-holders and creditors, in violation of section fourteen (14) of article (2) of the constitution of this State.

(*b*) As so construed, they authorize an unreasonable seizure of the assets of a corporate person, in violation of section six (6) of the same article.

(*c*) As so construed, they are special acts regulating the practice in courts of justice and providing a different method of procedure for a single class of corporate persons from that required in all other cases, and are thus in violation of section twenty-two (22) of article four (4) of said constitution.

19. As construed to warrant the proceedings against said corporation, which are sought in and by said petition, and which have been had and taken under the same by the court in this case, said act in regard to the dissolution of insurance companies and said statute of life insurance are, and each of them is, also null and void, as contrary to the Constitution of the United States, in this, to wit:

177 (*a*) Said acts impair the obligations of the contract between this State and said Chicago Life Insurance Company, and the contracts between said company and its policy-holders, and the contracts between said company and its creditors, in violation of section ten (10) of article one (1) of said constitution.

(*b*) Said acts also authorize an unreasonable seizure of the assets of said corporation, in violation of amendment four (4) of said constitution.

20. Under the pretense of providing a better remedy for offenses committed by insurance companies, said act in regard to the dissolution of such companies, and the general statute in relation to life insurance, above cited, seek to invest in the auditor of public accounts, as a political officer, and to be exercised at his mere pleasure and discretion, a power of search, seizure, and destruction, in vio-

lation both of the constitution of this State and of that of the United States.

21. Even if the statutes of life insurance, and for the dissolution of insurance companies, above cited, would be held to apply to corporations existing under special charter, nevertheless said auditor's petition against said Chicago Life Insurance Company is wholly unauthorized by said acts, for that said life insurance act has provided, in section ten (10) thereof, a special and particular restriction and penalty for the precise case supposed and set forth in the report of the examination upon which said petition is founded.

22. In so far as said life insurance act, and said act for the
178 dissolution of insurance companies, seek to impose new or more stringent grounds for the forfeiture of the corporate franchises of corporations existing under special charter, said acts are unconstitutional, null, and void, as impairing the obligation of the contract between the State and such companies.

23. In so far as the acts above cited seek to impose new and more burdensome conditions for the transaction of insurance business by companies not created under said statutes, but existing under special charters granted by the Legislature, said acts are unconstitutional, null, and void, as impairing the obligation of the contract between the State and such companies.

24. Under the circumstances set forth in the auditor's petition, and detailed in the report of his examiner, to which the same refers, and shown by the evidence, it was clearly the duty of the auditor to abstain from filing any such petition, or taking any other action against said company until after the directors thereof had been allowed a reasonable time and opportunity to repair the alleged losses suffered through the secret misconduct of their secretary, and to resume and prosecute their business of insurance.

For all which reasons, and for other reasons manifest from the pleadings, evidence, and proceedings in this cause, said company moves the court to enter the decree above specified, etc.

C. C. BONNEY,
C. L. BONNEY,
Solicitors for the Chicago Life Insurance Company.

Filed April 21, 1881.

179 *Decree for Final Injunction.*

Hearing April 19 and 20, 1881. Decision announced June 24. Final Decree for Perpetual Injunction entered July 2, 1881.

In the Circuit Court of Cook County. In Chancery.

THOMAS B. NEEDLES, Auditor, &c.,
vs.
CHICAGO LIFE INSURANCE COMPANY.

And now, on this 2d day of July, 1881, being one of the days of the June term of the said court, this cause came on to be heard upon the motion of the solicitor of said auditor for a perpetual injunction

against the said defendant; and the court having considered the petition of the said auditor and the exhibits therewith filed and made part thereof, and the answer of the said defendant thereto, all of which were filed on the 7th day of July, 1877, the order entered thereupon restraining the said defendant from the further prosecution of its business until the further order of the court, and appointing George M. Bogue receiver of the said company, which was entered on the said 7th day of July, 1881; and having considered the evidence introduced in behalf of the said complainant, and also on behalf of the said defendant; and having heard argument of counsel for the respective parties, and after a full hearing of the parties interested, that is to say, the said auditor, the complainant, and the said Chicago Life Insurance Company, the defendant; and having considered the motion of the said defendant for a decree in its favor, filed in said cause at the conclusion of the said hearing, wherein the said defendant specified the grounds upon which its said motion was based; and, being fully advised in the premises, the
180 court doth overrule and deny the said motion of said defendant for a decree in its favor, and doth find that the only question now before the court upon this hearing is whether the said defendant shall be perpetually enjoined from the further prosecution of its business; and the court doth further order, adjudge, and decree that the said defendant be and hereby is perpetually enjoined, restrained, and prohibited from the further prosecution of its business.

And the court doth further order and adjudge that the costs of this proceeding be paid by the defendant out of any property of the defendant available for that purpose.

And, thereupon, the said defendant, in open court, objects and excepts to each and every of the findings and decretal provisions aforesaid, and prays that its exceptions thereto may be preserved of record, and also prays that the evidence introduced on said hearing may be duly certified and preserved of record, which is accordingly done, etc.

And now, the said defendant, having been perpetually enjoined from the further prosecution of its business, it is thereupon, on motion of the solicitor and the said auditor, now made in open court, further ordered, adjudged, and decreed that the order of the court heretofore made in the said cause, appointing the said George M. Bogue receiver of the said defendant, be, and the same is hereby, ratified and confirmed, to which also said defendant excepts.

And said defendant also excepts to the form of this decree, for that it doth not set forth any sufficient grounds for said perpetual injunction, nor for continuing or appointing said receiver.

181 STATE OF ILLINOIS, }
Cook County, } *ss.:*

I, Jacob Gross, clerk of the circuit court of Cook county, and keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete transcript of the record, as made by the decree, entered of

record, and certificate of evidence filed on the 2d day of July, A. D. 1881, in a certain cause pending in said court, on the chancery side thereof, between Thomas B. Needles, auditor, &c., complainant, and The Chicago Life Insurance Company, defendant.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this seventeenth day of August, 1881.

[SEAL.] JACOB GROSS, *Clerk.*

182 *Assignment of Errors.*

Supreme Court of Illinois, Northern Grand Division. September Term, A. D. 1881.

CHICAGO LIFE INSURANCE COMPANY

v.

THOMAS B. NEEDLES, Auditor of Public Accounts of the State of Illinois.

Error to Cook.

And now comes the said Chicago Life Insurance Company, by C. C. & C. L. Bonney, its solicitors and counsel, and says that in the pleadings, proceedings, orders, and decrees in favor of said auditor and against said company, which are contained in the foregoing transcript of the record of the cause, there is manifest error, in this, among other things, to wit:

First. Said circuit court erred in exercising any jurisdiction over said company under said petition of said auditor.

Second. Said circuit court also erred in undertaking to enforce the statutory provisions under which said petition purports to be filed.

183 Third. Said circuit court also erred in granting the preliminary injunction awarded in this cause.

Fourth. Said circuit court also erred in decreeing that said injunction be made perpetual.

Fifth. Said circuit court also erred in appointing a receiver in said cause.

Sixth. Said circuit court also erred in permitting and directing said receiver to deal with the assets of said company in violation of law.

Seventh. Said circuit court also erred in decreeing that said receiver continue to act as such, and proceed to administer the property of said company.

Eighth. Said circuit court also erred in overruling the motion of said company for a decree in its favor.

Ninth. Said circuit court also erred in refusing to hold that the acts of said auditor, and the statutory provisions under which he assumed to act, are in violation of the constitution of this State.

Tenth. Said circuit court also erred in refusing to hold this said acts and provisions are in violation of the Constitution of the United States.

Eleventh. Said circuit court also erred in the other particulars which are specified in the motion of said company at the hearing of this cause, for a decree in its favor upon the merits thereof.

Twelfth. Said circuit court also erred in receiving and acting upon incompetent and irrelevant evidence, as manifestly appears from the exceptions set forth in the certificate thereof.

184 Wherefore, and for other reasons appearing in the pleadings, proceedings, orders, and decrees aforesaid, and which the said Chicago Life Insurance Company reserves the right to state and argue upon the hearing of this cause in the said supreme court, said company prays that all and singular the order and decrees that have been made by said circuit court against said company may be reversed, annulled, and altogether made as nothing, and that said company may be restored to all things which it hath lost by reason of the errors aforesaid, etc.

C. C. BONNEY,
C. L. BONNEY,
Solicitors and Counsel for said Company.

Appearance of Defendants in Error, and Waiver of Scire Facias.

[Title of the Cause.]

And hereupon comes the auditor of public accounts of the State of Illinois, by E. B. Sherman, his solicitor, and waives the issuing, service, return, and filing of a writ of *scire facias* to hear errors herein, and hereby enters his appearance in this cause, expressly saving and reserving the right to make and insist upon all or any objections which he might or could have urged, in case he had been duly served with such *scire facias*, and had appeared herein pursuant thereto, including the right to move to quash the writ of error herein, and dismiss this cause, if he shall be so advised, etc.

E. B. SHERMAN,
Solicitor for the Auditor of Public Accounts of the State of Illinois.

[Original on next page.]

185 *Appearance and Waiver of Scire Facias.*

Supreme Court of Illinois, Northern Grand Division. September Term, A. D. 1881.

CHICAGO LIFE INSURANCE COMPANY
vs.
THOMAS B. NEEDLES, Auditor of Public Accounts of the State of Illinois.

Error to Cook.

And hereupon comes the auditor of public accounts of the State of Illinois, by E. B. Sherman, his solicitor, and waives the issuing, service, return, and filing of a writ of *scire facias* to hear errors herein, and hereby enters his appearance in this cause, expressly saving and reserving the right to make and insist upon all or any objec-

tions which he might or could have urged, in case he had been duly served with such *scire facias*, and had appeared herein, pursuant thereto, including the right to move to quash the writ of error herein, and dismiss this cause, if he shall be so advised, &c.

E. B. SHERMAN,
Solicitor for the Auditor of Public Accounts of the State of Illinois.

186 And afterwards, to wit, on the 7th day of September, A. D. 1881, said day being of the September term of said court, the following, among other proceedings, were had and entered of record in said court, to wit:

SEPT. 7, 1881.

THE CHICAGO LIFE INSURANCE COMPANY } No. 45.
vs.
THOMAS B. NEEDLES, Auditor, &c. }

Error to Cook. September Term, A. D. 1881

And now comes the said defendant in error, by E. B. Sherman, his solicitor, and moves the court to quash the said writ of error, and dismiss the said cause.

Which said motion is, by order of the court, taken under advisement.

And afterwards, to wit, on the 9th day of September, A. D. 1881, said day being of the September term of said court, the following, among other proceedings, were had and entered of record in said court, to wit:

SEPT. 9TH, A. D. 1881.

THE CHICAGO LIFE INSURANCE COMPANY
vs.
THOMAS B. NEEDLES, Auditor, &c.

Error to Cook.

187 Now on this day come again said parties, by their attorneys, and this cause coming on to be heard, and the court being now fully advised as to the motion of defendant in error to quash the writ herein, it is ordered by the court that said motion be overruled.

And afterwards, to wit, on the 10th day of September, A. D. 1881, said day being of the September term of said court, the following, among other proceedings, were had and entered of record in said court, to wit:

SEPT. 10TH, A. D. 1881.

THE CHICAGO LIFE INSURANCE COMPANY } No. 45.
vs.
THOMAS B. NEEDLES, Auditor, &c. }

Error to Cook.

Now on this day this cause comes on to be heard in the regular

call of the docket, and it appearing to the court that said plaintiff in error has filed herein a duly certified transcript of the record and proceedings of the court below in this cause, together with abstracts thereof, and briefs and argument of counsel in support of the errors assigned, as required by law and the rules of this court in this behalf made and provided, and now submits this cause upon such transcript, abstracts, brief, and argument for the consideration and judgment of the court:

Therefore, it is ordered by the court that this cause be and
188 the same is hereby, taken under advisement.

And afterwards, to wit, on the 12th day of September, A. D. 1881, the same being of the September term of said court, the following, among other proceedings, were had and entered of record in said court, to wit:

SEPT. 12TH, 1881.

THE CHICAGO LIFE INSURANCE COMPANY } No. 45.
vs.
THOMAS B. NEEDLES, Auditor, &c. }

Error to Cook.

And now on this day comes the plaintiff in error herein, by his counsel, and moves the court for an extension of time in which to file briefs.

And said motion is taken by the court under advisement.

And afterwards, to wit, on the 13th day of September, A. D. 1881, the same being of the September term of said court, the following, among other proceedings, were had and entered of record in said court, to wit:

SEPT. 13TH, A. D. 1881.

THE CHICAGO LIFE INSURANCE COMPANY } No. 45.
vs.
THOMAS B. NEEDLES, Auditor, &c. }

Error to Cook.

189 And now on this day this cause comes on for hearing of the motion of said plaintiff in error for an extension of time to file briefs, and the court being fully advised in the premises, it is ordered by the court that said motion be sustained, and that said plaintiff in error have ten days additional time in which to file its briefs.

And afterwards, to wit, on the 10th day of November, A. D. 1881, said day being in vacation, after the September term of said court,

the opinion of the court was filed in said cause, in words and figures following, to wit:

THE CHICAGO LIFE INSURANCE COMPANY
vs.
THOMAS B. NEEDLES, Auditor, &c. } No. 45.

Error to Cook.

Filed Nov. 10th, A. D. 1881.

Opinion of SHELDON, J.:

This was a petition, filed by Thomas B. Needles, auditor of public accounts of the State, in the circuit court of Cook county, at the July term, 1877, against the Chicago Life Insurance Company, under the "Act in regard to the dissolution of insurance companies," approved February 17, 1874, praying that the company be enjoined from further proceeding with their business.

190 Upon final hearing at the July term, 1881, the court made a decree perpetually enjoining the company from the further prosecution of its business, & the company appealed.

The statute under which the petition was filed authorizes the proceeding whenever the auditor shall be of opinion that the company is insolvent, or its condition such as to render its further continuance in business hazardous to the insured therein, or to the public, or where the company has failed to comply with the rules, restrictions, or conditions provided by law.

The point is made that the statute under which this proceeding is had is, as applying to this company, unconstitutional. This question of constitutionality is fully settled by the recent decision of this court in Ward *v.* Farwell, 97 Ill., 593, where it was decided that this act of 1874 was constitutional, and that it was so as applied to the Republic Life Insurance Company incorporated under a special charter granted before the passage of the act of 1874, to wit, March 22, 1869, in whose charter no specific reservation of legislative control was contained. By section five of an act amending the charter of the present company, approved February 21, 1867, it is provided as follows:

"This act, and the act to which this is an amendment, shall
191 not be deemed to exempt said company from the operation of such general laws as may be hereafter enacted by the General Assembly on the subject of life insurance." Afterward, on March 29, 1867, said amendment to the charter, of which the foregoing was a part, was formally adopted by the company. This strengthens the application of the decision in Ward *v.* Farwell to the present case.

There is one point of objection against the unconstitutionality of the statute made in this case which it is said was not raised in the case of Ward *v.* Farwell, viz., that it is a special act regulating the practice in courts of justice, and providing a different method of procedure for a single class of corporate persons from that required in all other cases, & thus is in violation of section 22 of article 4 of the constitution of the State, prohibiting the passage of special laws

regulating the practice in courts of justice. This method of procedure is applicable to all insurance companies, and is not special legislation, and does not come within such prohibition. Various other points are made against the validity of the act of 1871, but we consider all of them to have been fully met and decided in favor of the act in Ward *v.* Farwell, and that it is unnecessary to notice them further. It is contended that the proofs do not make a case under the law.

192 It appears from the evidence that before the change of the corporate name of the company by the amendment to its charter of February 21, 1867, $100,000 of stock had been subscribed for and ten per cent. thereof paid in cash, that being the only payment in cash upon such stock subscriptions, with perhaps one exception. That the remainder of such subscriptions to the stock, after the change of its corporate name, was professedly paid for by the notes of the stock subscribers, payable, in nearly all cases, on demand, and without interest, the payment of which notes was never demanded by the company, and the notes were not secured by a deposit of real estate security and other collaterals. The company proceeded to do business with no other capital or resources.

From 1871 to 1876, the company made annual sworn reports to the auditor of the State, pursuant to the law of 1869, in all of which the capital stock of the company to the amount of $125,000 was stated to be fully paid up in cash.

In 1871 the company began to declare dividends to the stockholders, which were regularly declared to 1876, the amount being $55,045, and this in violation of a by-law that all dividends should be applied in payment of capital stock subscribed until the same should be paid, and during the time the company was not in a condition to justify the paying of any dividends. In the annual

193 sworn statements made to the auditor, from 1873 to 1876, there were included and scheduled as part of the assets of the company a large amount of securities for which it had never paid, & which it did not own, they amounting in 1876 to $89,422.

The receipts of the company, as shown by its books, varied largely from its receipts as shown in its sworn reports to the auditor, such discrepancy in the total receipts from 1871 to 1876 appearing to be $95,006.46.

There was the like discrepancy as to disbursements, they appearing for that same time, as reported to the auditor, to be $22,777.50 more than they actually were.

In June, 1877, the auditor caused an examination to be made of the affairs of the company, and when the examiner was ready to trace the securities through the company's cash-book to see whether the company actually owned the securities it claimed, the secretary of the company suddenly disappeared & absconded. It appeared that the value of the assets of the company was $196,685, the liabilities $344,857, including net per cent. value of policies on four per cent. basis, showing a deficiency of assets of $148,171.58.

It is attempted to mitigate this unfavorable showing of the financial condition of the company in various ways.

As the securities before mentioned stood in the name of the company, the legal title appearing to be in the company, it is
194 claimed that they ought to be regarded as assets of the company. The company had paid nothing for them, & they were not actually the property of the company. It would appear that they had been so taken in the name of the company with the expectation of their becoming its property when it might afterwards be in funds & pay for them.

They were not *bona fide* assets, and the exhibiting of them as such in the company's reports to the auditor was deceptive to him, to persons taking insurance, & to the public.

Evidence was introduced that the good will of the company was of the value of $100,000 or $150,000, and it is claimed that this should be counted an asset of the company. The good will of the company would be a poor species of assets to pay losses with. And it is funds which will pay losses that an insurance company is required by law to have.

The examiner of the condition and affairs of the company appointed by the auditor made report containing among "liabilities" this item: "Net present value of policies, actuaries 4 per cent., $333,276," and appended to the footing of liabilities was, "Leaving an impairment of $148,171.58. The impairment on the American 6 per cent. or commercial basis would be $75,205.58." The reason or significance of this last clause appearing in the report is not apparent. But the company's counsel takes advantage of
195 this, and insists that the estimate should have been on the last-named 6 per cent. basis, so greatly lessening the deficiency of assets as estimated on the four per cent. basis. Section 10 of the general act for the regulation of the business of life insurance, approved March 26, 1869, (R. S. 1874, p. 604,) provides as follows: "When the actual funds of any life insurance company doing business in this State are not of a net value equal to the net value of its policies, according to the 'combined experience' or 'actuary's' rate of mortality, with interests at four per cent. per annum, it shall be the duty of the auditor to give notice to such company and its agents to discontinue issuing new policies within this State until such time as its funds have become equal to its liabilities, valuing its policies as aforesaid."

The four per cent. basis prescribed by this law must certainly govern, and the impairment of the assets of the company upon this basis, instead of on the "American 6 per cent. or commercial basis," must be taken as showing the deficiency of assets. The Legislature, in the protection of the public, might, to that end, well prescribe what amount of assets and degree of solvency an insurance company should possess, and on what basis it should be estimated. It would be a proper exercise of the police power. The validity
196 of such a provision is sufficiently vindicated by the principles laid down in the Ward case, and further remark thereon is not required. This company is subjected to the operation of this law by the acceptance of the amendment to its charter before adverted to, made February 21, 1867.

In this connection may be noticed the point made that this general insurance law has prescribed what shall be the penalty for a deficiency of assets, to wit, that the company shall discontinue issuing new policies until such time as the funds of the company have become equal to its liabilities, and a disregard of that provision by any officer or agent is made punishable by a fine not exceeding $1,000. It is insisted that this is exclusive, and must be the only consequence of deficiency of assets. This general insurance law was passed in 1869. It would surely be competent for a subsequent Legislature, in 1874, to prescribe another and different penalty and remedy, and such proceedings as the act of 1874 authorized to be taken may be resorted to, whatever be the law of 1869. Insolvency is one of the causes named for the proceeding under the act of 1874.

It is said on behalf of the company that as soon as the impairment of the assets of the company was discovered, the company proposed to the auditor to effect a reinsurance of all the outstanding risks of the company, & it is claimed that should be taken as making up any de-
197 ficiency of assets. The evidence is vague as to any offer of reinsurance. It is found in the testimony of the examiner, who, after first stating as his recollection that there were two offers made to reinsure all the risks of the company in some company satisfactory to him, then proceeds: "My recollection is that if I communicated with the auditor with regard to reinsuring those risks it was on a proposition made by some other company to do what we call twist the policies; not for the company to reinsure all of its risks at once, but to give another company the privilege of coming in and issuing new policies of its own to each individual policy-holder on such terms as they could make with the policy-holders themselves, & take their pay out of such assets as they might choose of the company. I think there was a proposition of that kind made, and I think it was refused either by myself or after communication with the auditor. The real ground of complaint would seem to be, that the auditor proceeded in the precise course pointed out by the statute, and did not go outside of the line of his duty and stop to negotiate & bargain with the company.

We cannot make out of this alleged offer of reinsurance anything which should be held as a defense to this proceeding or be
198 taken as making up the company's deficiency of assets.

As the matured liabilities of the company at the time of commencing the auditor's suit did not exceed $8,400, which could be paid on demand, it is contended the company was not insolvent, & authorities are cited to the effect that when a debtor is able to meet all his engagements as they become due in the ordinary way he is solvent. It is a higher standard of solvency than this which our law requires of insurance companies. The general insurance law, before referred to, directs that when the actual funds of any life insurance company are not of a net value equal to the net value of its policies, according to the mode of valuation there named, that the auditor shall notify the company to discontinue issuing new policies until such time as its funds have become equal to its liabilities, valuing its policies as directed. This is an expression of the sense of the

Legislature of the degree of solvency a fire insurance company should have, & it requires its assets to be equal to the amount of its liabilities whether due or not. We think the company was insolvent within the purview of the insurance law.

The point finally made is, that all there was of wrong in the
199 management and condition of the company is to be laid to charge of the secretary of the company alone; that all the other officers and agents of the company had acted in good faith and were guiltless of any wrong-doing, & hence, it should be taken that there was no wilfull default on the part of the company, and it should not be subjected to this proceeding. The company could act only through its officers and agents, & should be held responsible for the acts of & mode of management by its secretary, & the result therefrom. It is the management and condition of the company, rendering its continuance in business hazardous to the public, which entitles to this proceeding, without regard to what one or how many of the company's officers participated in the mismanagement or the bringing about of such condition. The public should have the protection which the law has provided against the unsafe doing of business by insurance companies. The hazard to the public is the same whether one or more of the company's officers were concerned in producing it, and whether or not it resulted from the wilfull default or misconduct of the company.

We cannot say that the court below was not justified in finding from the evidence that the condition of the company was such as to render its further continuance in business hazardous to the insured therein and to the public, & the decree will be affirmed.

Decree affirmed.

200 Be it remembered, to wit, on the tenth day of November, A. D. 1881, the same being in vacation after the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

THE CHICAGO LIFE INSURANCE COMPANY
vs.
THOMAS B. NEEDLES, Auditor of Public Accounts, State of Illinois. } 45. No. 435.

Error to Cook.

On this day came again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid, nor in the rendition of the decree aforesaid, is there anything erroneous, vicious, or defective, and that that record is no error: Therefore, it is considered by the court that the decree aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the court that the said

defendant in error recover of and from the said plaintiff in error his costs, by him in this behalf expended, and that he have execution therefor.

201 STATE OF ILLINOIS, *ss:*

I, Everell F. Dutton, clerk of the supreme court for the northern grand division of the State of Illinois, and keeper of the records thereof, do hereby certify the above and foregoing to be a true copy of a certified transcript of record on file in said office, and of the proceedings had in said supreme court of record in a certain cause entitled in this court, The Chicago Life Insurance Company *vs.* Thomas B. Needles, auditor, &c.

Witness my hand and the seal of said supreme court, at Ottawa, in said State, this 25th day of January, A. D. 1882.

[SEAL.] E. F. DUTTON, *Clerk.*

202 I do hereby certify that the annexed certificate and attestation of Everell F. Dutton are in due form of law; and I do further certify that he is the clerk of the supreme court for the northern grand division of the State of Illinois, and that his signature to said certificate is genuine.

A. M. CRAIG,
Jan. 27th, 1882. *Chief Justice.*

203 & 204 *Assignment of Errors.*

UNITED STATES OF AMERICA, *ss:*

In the Supreme Court, October Term, A. D. 1882.

CHICAGO LIFE INSURANCE COMPANY, Plaintiff in Error,
vs.
THOMAS B. NEEDLES, Auditor of Public Accounts of the State of Illinois, Defendant in Error.

Error to the supreme court of Illinois.

And now comes the said Chicago Life Insurance Company, plaintiff in error, by C. C. Bonney, its solicitor and counsel, and says that in the proceedings and final decree of the circuit court of Cook county, in the State of Illinois, in this cause, and in the affirmance of said proceedings and decree by the supreme court of the State of Illinois, which is the highest court of said State in which a decision could be had, there was drawn in question the validity of certain statutes of the State of Illinois, upon the ground that said statutes are repugnant to the Constitution of the United States, and the decision of said courts, and each of them was in favor of the validity of said statutes; and there was also drawn in question therein an authority exercised against this company by said State of Illinois, and by the auditor of public accounts thereof, upon the ground that said authority was repugnant to the Constitution of the United
205 States, and the decision of said courts, and each of them was in favor of the validity of said authority, as manifestly appears from the foregoing transcript of said proceedings and decree.

And the said Chicago Life Insurance Company also says, that in the proceedings and decree aforesaid there is manifest error in this, to wit:

First. It manifestly appears from said proceedings and decree that the Chicago Life Insurance Company hath well and truly kept and performed the contract of its charter with said State of Illinois, and hath not done or suffered any act or thing for which its franchises might be lawfully suspended or forfeited, or taken away; and the said circuit court of Cook county manifestly erred in decreeing that said company had forfeited the right to transact business and exercise its franchises under its charter; and the said supreme court of Illinois manifestly erred in affirming that decree.

Second. The said circuit court of Cook county also erred in decreeing that said company had forfeited the right to hold, use, and enjoy the property acquired under its charter; and the said supreme court of Illinois also erred in affirming that decree.

Third. The said circuit court of Cook county also erred in decreeing that the supposed cause of action alleged in the petition of said auditor against said company constitutes any good ground for enjoining the business and seizing and administering the assets of said company; and the said supreme court of Illinois also erred in affirming that decree.

206 Fourth. Even if the supposed cause of action alleged in said petition had ever existed in fact, which is denied by said company, nevertheless the said circuit court of Cook county erred in refusing to decree that such cause was wholly removed by said company before the filing of said petition; and the said supreme court of Illinois also erred in affirming that decree.

Fifth. The said circuit court of Cook county also erred in refusing to hold and decree that the offer of said company to reinsure all its risks, as set forth in said proceedings, wholly removed the said supposed cause of action alleged in said auditor's petition, and that thereby, if not before, said company was fully entitled to proceed with its said business and to exercise all its franchises under the charter contract between it and said State of Illinois; and the said supreme court of Illinois also erred in affirming said refusal of said circuit court.

Sixth. The said circuit court of Cook county also erred in decreeing that a mere supposed deficiency of assets, arising from the secret and concealed misconduct of the secretary of said company, without the knowledge or participation of the other officers and directors thereof, and without any concurrence of the company itself therein, constituted a good ground for enjoining the business and distributing the assets of said company; and the said supreme court of Illinois also erred in affirming that decree.

Seventh. The said circuit court of Cook county also erred
207 in holding and decreeing that the State of Illinois had power under the charter contract between said State and said company to impose upon said company new and more stringent conditions of the exercise of its corporate franchises, and new and more stringent grounds for the forfeiture of its corporate rights and

property; and said supreme court of Illinois also erred in affirming that decree.

Eighth. The said circuit court of Cook county also erred in holding and decreeing in substance that said company was subject to the so-called four per cent. basis, required by section ten of the act of the Legislature of said State, relating to life insurance, approved by the Governor of said State on or about March 26, A. D. 1869, as a condition of transacting business under its charter in said State, and in enjoining said company from transacting any business, for a supposed non-compliance with said requirement and the said supreme court of Illinois also erred in upholding and affirming that decree.

Ninth. The said circuit court of Cook county also erred in holding and decreeing in substance that for a non-compliance with said provision of said section ten of said act it could adjudge against the company any other penalty than that therein specifically prescribed, and in holding and decreeing that for such a non-compliance, if established in fact, the business of the company could be lawfully arrested and enjoined and its property be taken away and ad-
208 ministered; and the said supreme court of Illinois also erred in upholding and affirming that decree.

Tenth. The said circuit court of Cook county also erred in refusing to hold and decree that under its charter from said State said company is not subject to any new conditions of corporate existence, or of the transaction of the business for which it was incorporated, but only to such regulations of the mode of transacting that business as might be made without impairing the corporate rights and interests vested in the company by its charter; and the said supreme court of Illinois also erred in affirming that decree.

Eleventh. The said circuit court of Cook county also erred in refusing to hold and decree that the authority exercised against said company by said State of Illinois, and by said auditor, was repugnant to the Constitution of the United States, in that it violated the obligations of the charter contract between said State and said company, and also violated the obligation of the contracts between said company and the holders of its policies of life insurance, contrary to the provision of section ten of article one of the Constitution of the United States; and said supreme court of Illinois also erred in sustaining and affirming that decree.

Twelfth. The said circuit court of Cook county also erred in holding and decreeing that the mere opinion of said auditor, a political officer of said State, respecting the condition of said company, did or could constitute any good ground for bringing suit to en-
209 join the business and administer the assets of said company, contrary to the provisions of amendment four of the Constitution of the United States; and said supreme court of Illinois also erred in affirming that decree.

Thirteenth. The said circuit court of Cook county also erred in refusing to hold and decree that the provisions of the act of the Legislature of said State, under which said auditor brought his said suit, and which act was approved by the Governor of said State on or about February 17th, A. D. 1871, in so far as said provisions set

forth and define the causes for which such suit may be brought, were, and are, void for want of certainty and materiality; and said supreme court of Illinois also erred in sustaining and affirming that refusal.

Fourteenth. The said circuit court of Cook county also erred in holding and decreeing in substance that the supposed deficiency of the assets of said company alleged in said petition, even if the same existed in fact, which is denied, did or could make said company insolvent, or did or could warrant the proceedings had and taken against said company at the suit of said auditor; and the said supreme court of Illinois also erred in upholding and affirming that decree.

Fifteenth. The said circuit court of Cook county also erred in sustaining and enforcing said proceedings, and in rendering said final decree against said company, for that said proceedings and
210 decree, and said statute of the State of Illinois, are also in many other respects plainly repugnant to the provisions of section ten of article one, and to those of amendment four, and to those of article one of amendment fourteen of the Constitution of the United States, as will be more fully shown in the brief to be filed in support of these assignments of error; and said supreme court of Illinois also erred in upholding said proceedings and in affirming said decree.

And the said Chicago Life Insurance Company annexes here a copy of the statutes constituting its charter aforesaid, and makes the same a part hereof.

And said company also annexes hereto a copy of so much of the aforesaid acts of said State as immediately relate to the errors above assigned.

Wherefore the said Chicago Life Insurance Company prays that the said Supreme Court of the United States will proceed to consider the proceedings and decree aforesaid, and the matters aforesaid, above assigned for error, and that the said proceedings and decree of the said circuit court of Cook county, and the affirmance thereof by the said supreme court of Illinois, may thereupon, respectively, be annulled, reversed, and altogether made as nothing, and that this company may be restored to all things which it hath lost by reason of said proceedings and decree, &c.

C. C. BONNEY,

Solicitor & Counsel for the Chicago Life Insurance Company.

211 *The Charter and Amendments.*

UNITED STATES OF AMERICA, *ss:*

In the Supreme Court. October Term, A. D. 1882.

THE CHICAGO LIFE INSURANCE COMPANY, Plaintiff in Error,

vs.

THOMAS B. NEEDLES, Auditor of Public Accounts of the State of Illinois, Defendant in Error.

Error to the supreme court of Illinois.

An act to incorporate the Travelers' Insurance Company.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That Harmon G. Reynolds,
212 J. H. Currier, D. W. Page, Charles L. Currier, Simon Florsheim, V. T. Priest, and T. J. Turner, and all others who may become associated with them as stockholders, as is hereinafter provided, their successors and assigns, forever, be, and they hereby are, created and made a body politic and corporate, for the purpose of insuring persons against the accidental loss of life or personal injury sustained while traveling by railway, steamboat, or other mode of conveyance, and such other kinds of insurance as the directors of this corporation shall deem expedient, by the name of the "Travelers' Insurance Company," and by that name shall be, and hereby are, empowered to purchase, have, hold, possess, and enjoy, to themselves and their successors, lands, tenements, hereditaments, goods, chattels, and effects of every kind; and the same to grant, alien, sell, invest, and dispose of; to sue and to be sued, plead and be impleaded, in all courts of justice; to have and use a common seal, and the same to change, alter, and renew at pleasure; and to ordain and put into execution such by-laws and regulations as they may deem proper for the well ordering and government of said corporation, and the transaction of its business: Provided, They be not repugnant to the laws of the United States or of this State, or to the provisions of this act of incorporation.

SEC. 2. The capital stock of said corporation shall not be less than one hundred thousand dollars, and may be at any time hereafter increased by said company to any sum not exceeding five hundred thousand dollars, and shall be divided into shares of one hundred dollars each; and there shall be paid into the treasury of said corporation by each subscriber to said capital stock, at the time of subscribing for the same, an installment of ten per cent. on the amount by him subscribed for, and further installments shall be made from time to time as may be ordered by the board of directors; and the remainder of the said shares so subscribed for shall, within thirty days after the organization of said company, be secured, to be
213 paid either by bonds and mortgages on real estate, by indorsed promissory notes, or in such other manner as may be required by the by-laws of said company, and approved by the board of directors thereof.

SEC. 3. The capital stock of said corporation shall be transferable according to the rules and regulations of the company; and if any subscriber of any share or shares of said stock shall neglect or refuse to pay the installments as aforesaid for the space of sixty days after the same shall become due or required, and after he or they have been notified thereof according to the by-laws of said company, the amount already paid by such negligent stockholder shall be forfeited to the uses of the company, and the stock by him subscribed shall be sold at auction, or disposed of in such manner as the board of directors may deem for the best interests of the company.

SEC. 4. The business of said corporation shall be the insuring of persons against the accidental loss of life or personal injury sustained while traveling by railways, steamers, and other modes of conveyance in the United States and other countries; and contracts of insurance may be made on such terms and conditions, and for such periods of time, and confined to such persons as shall be, from time to time, ordered and provided for by the by-laws of said corporation.

SEC. 5. The home office of said company shall be located in the city of Springfield or city of Chicago, as the board of directors may determine; and the stock, property, and affairs of said corporation shall be managed and conducted by not less than five nor more than fifteen directors, the number of said directors to be determined by the by-laws of said company; and any director's power to act as director of said company may be canceled or suspended whenever a majority of the board shall deem it for the best interests of the company so to do. The directors of said company shall be chosen from among the stockholders in such manner and at such time or times as may be determined by the by-laws of said corporation; and in case of any vacancy from death, resignation, or other cause in the board of directors of said company, the remaining directors shall have power to fill such vacancy by appointment, and the director thus appointed shall hold his office until the next regular election, as provided by the by-laws of the company. In all elections for directors for said company, each stockholder, by himself or attorney, shall be allowed one vote for each and every share so held by him, and none but stockholders shall be eligible to the office of director.

214

SEC. 6. To carry out the provisions of this act, the corporators, hereinbefore named, are hereby constituted the first board of directors of said company, and shall hold their office until an election be had according to the by-laws of said corporation; and they or a majority of them are authorized to open books and receive subscriptions to the capital stock of said company; and when the amount of one hundred thousand dollars shall have been subscribed according to the requirements of this charter and the by-laws of said corporation, the board of directors shall cause publication to be made in one newspaper published in the city of Chicago, and one newspaper published in the city of Springfield, of the full and complete organization of said company; and it shall be lawful for said com-

pany to commence business within thirty days after publication shall have been made as aforesaid.

SEC. 7. The directors shall choose a president, vice-president, treasurer and secretary, whose term of office and several duties
215 shall be defined and set forth by the by-laws of the corporation; and they shall appoint such other officers, clerks, and agents, and establish such agencies in this State and elsewhere, as shall be by them deemed advisable for conducting the business of the company; and the president and vice-president, treasurer and secretary, shall be chosen from and by the directors of said company.

SEC. 8. All policies of insurance or other contracts authorized by this act may be made with or without the seal of said corporation, and shall be binding and obligatory upon said corporation, according to the true intent and meaning of such policies and contracts.

SEC. 9. The capital stock, moneys, and personal estate of said corporation may be invested, at the discretion of the directors, either in loans upon bonds and mortgages, upon real estate, or in United States stocks or bonds created by any State, or of corporations created by this State; and the same may be called in and re-invested at pleasure under the provisions of this act:

Provided, That nothing herein contained shall be construed so as to authorize said company to be engaged in the business of banking.

SEC. 10. This act shall be deemed a public act, and be liberally construed for the purposes therein mentioned, and be in force from and after its passage.

Approved February 16, 1865.

UNITED STATES OF AMERICA, }
State of Illinois, } ss.

OFFICE OF THE SECRETARY.

I, Edward Rummel, secretary of the State of Illinois, do hereby certify that the foregoing is a true copy of an enrolled
216 law of the State of Illinois, entitled "An act to incorporate the Travelers' Insurance Company," approved February 16, 1865, now on file in this office.

In witness whereof, I hereto set my hand and affix the great seal of State, at the city of Springfield, this 7th day of March, A. D. 1872.

[L. S.] EDWARD RUMMEL,
Secretary of State.

An act to amend the charter of the Travelers' Insurance Company of Chicago, Ill.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the name of the "Travelers' Insurance Company of Chicago, Ill.," be, and the same is hereby, changed to "Chicago Life Insurance Company," such change in nowise to affect any of the acts and things done by said company previous to the passage of this act.

SEC. 2. The said company shall have power to make insurance upon the lives of individuals, and upon the lives of persons connected by marital relations to the persons applying for insurance; and also upon the lives of persons in whom the applicant has a pecuniary interest, as creditor or otherwise; to secure trusts, grants, annuities, and endowments, and purchase the same, in such manner and for such premiums and considerations as the board of directors or executive committee shall direct. The board of directors may collect and sell its securities and reinvest the proceeds thereof, and may accumulate a contingent capital by receiving conditional notes for insurance at the time of insuring any person or persons, such notes to be paid in the way and manner provided for in the note or notes and by the by-laws of the said company, and the said notes shall not be taxed until paid.

217 SEC. 3. Whenever the cash accumulations of said company shall amount to one hundred thousand dollars over and above the paid-up capital stock of said company, it shall be lawful for the directors of said company to retire the paid-up capital stock, and conduct the future business of said company on the plan of mutual life insurance. Contracts of insurance may be made on such terms and conditions and for such periods of time as shall be from time to time ordered and provided for by the by-laws of said company, and agreed upon in the contracts for insurance.

SEC. 4. Section fourth of the charter of the Travelers' Insurance Company is hereby made to read as follows: "The directors of said company may appoint three of their members an executive committee, who shall have all the powers of the board of directors when the board of directors is not in session. Said company may divide insurance into classes, and the premiums received shall be appropriated to the payment of losses and expense of the class to which they belong, and may conduct insurance both upon the plan of stock and mutual life insurance."

SEC. 5. This act and the act to which this is an amendment shall not be deemed to exempt said company from the operation of such general laws as may be hereafter enacted by the General Assembly on the subject of life insurance.

SEC. 6. This act shall be deemed a public act, and shall be liberally construed for the purpose therein mentioned, and shall take effect and be in force from and after its passage.

Approved February 21, 1867.

218 UNITED STATES OF AMERICA, } ss.:
State of Illinois, }

OFFICE OF SECRETARY.

I, Edward Rummel, secretary of the State of Illinois, do hereby certify that the foregoing is a true copy of an enrolled law of the State of Illinois, entitled "An act to amend the charter of the Travelers' Insurance Company, of Chicago, Illinois," approved February 21, 1867, now on file in this office.

In witness whereof, I hereto set my hand and affix the great

seal of State, at the city of Springfield, this 29th day of February, A. D. 1872.

[L. S.] EDWARD RUMMEL,
Secretary of State.

219 The Illinois Four-per-cent Rule.

Life Insurance Act, Ill. R. S. Ch. 73, approved March 26, A. D. 1869, in force July 1, A. D. 1869: Sec. 10. When the actual funds of any life insurance company doing business in this State are not of a net value equal to the net value of its policies, according to "the combined experience" or "actuaries" rate of mortality, with interest at four per cent per annum, it shall be the duty of the auditor to give notice to such company and its agents to discontinue issuing new policies within this State, until such time as its funds have become equal to its liabilities, valuing its policies as aforesaid. Any officer or agent who, after such notice has been given, issues or delivers a new policy from and on behalf of such company, before its funds have become equal to its liabilities as aforesaid, shall forfeit, for each offense, a sum not exceeding $1,000.

[Other sections omitted.]

220 *The Illinois Dissolution Act.*

An act in regard to the dissolution of insurance companies. [Approved February 17, 1874. In force July 1, 1874.]

Involuntary Dissolution: Sec. 1. That if the auditor of State, upon examination of any insurance company incorporated in this State, is of the opinion that it is insolvent, or that its condition is such as to render its further continuance in business hazardous to the insured therein, or to the public, or that it has failed to comply with the rules, restrictions, or conditions provided by law, or has exceeded or is exceeding its corporate powers, he shall apply by petition to a judge of any circuit court of this State to issue an injunction, restraining such company, in whole or in part, from further proceeding with its business, until a full hearing can be had, or otherwise, as he may direct. It shall be discretionary with such judge, either to issue such injunction forthwith, or to grant an order for such company, upon such notice as he may prescribe, to show cause why said injunction should not issue, or to cause a hearing to be had on complaint and answer, or otherwise, as in ordinary proceedings in equity, before determining whether an injunction shall be issued. He may, in all such cases, make such orders and decrees, from time to time, as the exigencies and equities of the case may require, and in any case, after a full hearing of all parties interested, may dissolve, modify, or perpetuate such injunction, and make all such orders and decrees as may be needful to suspend, restrain,
221 or prohibit the further continuance of the business of the company.

[Other sections omitted.]

222 & 223 *Allowance for Writ of Error and Supersedeas.*

UNITED STATES OF AMERICA, *ss:*

In the Supreme Court. To the October Term, A. D. 1882.

THE CHICAGO LIFE INSURANCE COMPANY, Plaintiff in Error,

vs.

THOMAS B. NEEDLES, Auditor of Public Accounts of the State of Illinois, Defendant in Error.

Error to the supreme court of Illinois.

Upon consideration of the petition of the Chicago Life Insurance Company for a writ of error to remove into the Supreme Court of the United States for re-examination, a certain cause lately pending in the supreme court of the State of Illinois, between said company and Thomas B. Needles, auditor of public accounts of said State; and on consideration of the proceedings in said cause, and the final decision of said supreme court of Illinois therein, and of the application of said company for a supersedeas thereof, and the security offered therefor, it appears to the undersigned, one of the justices of the Supreme Court of the United States, that the errors alleged are reviewable in this court, and that there is probable cause for the issuance of such writ of error, and for making the same a supersedeas, &c.:

221 Therefore, it is ordered—

That said writ of error be, and the same hereby is, allowed, and it is directed that the same be issued pursuant to the practice of the court, by the clerk thereof, or the clerk of any circuit court of the United States as may be most convenient.

And the security now offered being approved by the undersigned, it is further ordered that said writ of error be made a supersedeas, and that the clerk issuing the same do certify thereon that it is to operate and be obeyed accordingly; provided, said writ of error shall be served in the manner provided, and within the time allowed by law therefor; the custody of the assets of said company in the hands of the receiver mentioned in the proceedings, not to be impaired by such supersedeas, but proceedings in administration to be stayed till otherwise ordered, &c.

JOHN M. HARLAN,
Associate Justice Sup. Ct U. S., 7th Circuit.

November 23d, A. D. 1881.

224½ [Endorsed:] Chicago Life Ins. Co. *v.* Needles, auditor of Illinois. Allowance of writ of error and supersedeas.

225 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of

the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Chicago Life Insurance Company, plaintiff in error, and Thomas B. Needles, auditor of public accounts of the State of Illinois, defendant in error, wherein was drawn in question the validity of a statute of, and an authority exercised under, said State, on the ground of their being repugnant to the Constitution and laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause
226 of the Constitution of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twenty-third day of November, in the year of our Lord one thousand eight hundred and eighty-one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by me to operate as a supersedeas.

JOHN M. HARLAN,
Associate Justice Sup. Ct U. S.

227 STATE OF ILLINOIS, } ss.
Northern Grand Division, }

Pursuant to the foregoing writ of error from the Supreme Court of the United States, the judges of the supreme court of Illinois do hereby send to the said Supreme Court of the United States the record and proceedings in the cause specified in said writ of error, wherein the Chicago Life Insurance Company is plaintiff in error, and Thomas B. Needles, auditor of the State of Illinois, is defendant in error, with all things concerning the same, and including as well the proceedings in the circuit court of Cook county as the proceedings in said supreme court of Illinois, in said cause, together with said writ of error, and the citation issued thereon, and proof of the due service of said writs respectively, and the order allowing the same, and a copy of the bond given by said company in that behalf, the

original of said bond remaining on file in the office of the clerk of said court; that upon this return the said Supreme Court of the United States may cause to be done in the suit aforesaid what of right and according to the laws and customs of the United States should be done therein, &c.

Witness Everell F. Dutton, clerk of said supreme court of Illinois, and the seal thereof, at Ottawa, in the northern grand division of said State, where said record remains, this twenty-fifth day of January, A. D. 1882.

[SEAL.] E. F. DUTTON, *Clerk.*

[Endorsed:] Supreme Court of the United States. Chicago Life Ins. Co. *v.* Needles, auditor of Ills. Writ of error to the supreme court of Illinois. Filed Nov. 30th, 1881. E. F. Dutton, clerk. To be returned with the transcript.

228 UNITED STATES OF AMERICA, *ss:*

In the Supreme Court. To the October Term, A. D. 1882.

THE CHICAGO LIFE INSURANCE COMPANY

vs.

THOMAS B. NEEDLES, Auditor of Public Accounts of the State of Illinois.

Error to the supreme court of Illinois.

STATE OF ILLINOIS, } *ss:*
Northern Grand Division }

I, the undersigned, clerk of the supreme court of the State of Illinois for said grand division, do hereby certify that the original writ of error in the above entitled cause, with an endorsement thereon, making the same a supersedeas, was, on this thirtieth day of November, 1881, received by me, and that a copy thereof, for the adverse party, was at the same time lodged in my office, where the record of said cause remains.

Witness my hand and the seal of said court, at Ottawa, in said grand division, on the day and year above written.

[SEAL.] EVERELL F. DUTTON,
Clerk Supreme Court.

229 And afterwards, to wit, on the 6th day of December, A. D. 1881, there was filed in said court a certain bond in said cause, which said bond is in words and figures as follows, to wit:

Know all men by these presents, that Howard Z. Culver, Godfrey Snydacker, Charles L. Currier, Emanuel Frankenthal, and Homer N. Hibbard, of the county of Cook, and State of Illinois, are held and firmly bound unto Thomas B. Needles, auditor of public accounts of the State of Illinois, and his successors in office, in the sum of one thousand ($1,000.00) dollars, good and lawful money of the United States of America, to be paid, for the use of whom it may concern, to said auditor of public accounts, or to his certain

attorney, executor, successors, or assigns, for which payment, well and truly to be made, we bind ourselves, and our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this fourteenth (14th) day of November, in the year of our Lord one thousand eight hundred and eighty-one.

The condition of this obligation is such that whereas, in a certain cause lately pending in the supreme court of the State of Illi-
230 nois, between The Chicago Life Insurance Company and Thomas B. Needles, auditor of public accounts of the State of Illinois, a judgment was rendered by said court against said company, affirming a decree of the court below perpetually enjoining said company from prosecuting its business, and directing the administration of its assets by a receiver; and whereas also the said insurance company has sued for a writ of error to remove said cause to the Supreme Court of the United States, to be there re-examined, &c.: Now, if the said Chicago Life Insurance Company shall prosecute said writ of error with effect, and if it fail to make its plea good, shall answer all damages and costs that may be adjudged against it in that behalf, then this obligation to be void; otherwise to remain in full force and virtue.

HOWARD Z. CUTTER. [SEAL.]
GODFREY SNYDACKER. [SEAL.]
CHARLES L. CURRIER. [SEAL.]
EMANUEL FRANKENTHAL. [SEAL.]
HOMER N. HIBBARD. [SEAL.]

Approved as a supersedeas bond.

JOHN M. HARLAN,
Associate Justice S. C. U. S., 7th Circuit.

STATE OF ILLINOIS, }
County of Cook, } ss:

Godfrey Snydacker, of said county and State, being first duly sworn, upon his oath says: That the obligors named in the within bond have property, and are worth many times the amount of the penalty of said bond over and above all debts, liabilities, and exemptions; and further he says not.

GODFREY SNYDACKER.

Subscribed and sworn to before me, this 16th day of November, A. D. 1881.

[L. S.]

LYMAN M. PAINE,
Notary Public.

231 Said bond is endorsed as follows: Filed Dec. 6, 1881. E. F. Dutton, clerk.

232 The United States of America to Thomas B. Needles, auditor of public accounts of the State of Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the

second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein The Chicago Life Insurance Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John M. Harlan, associate justice of the Supreme Court of the United States, this twenty-third day of November, in the year of our Lord one thousand eight hundred and eighty-one.

JOHN M. HARLAN,
Associate Justice Sup. Ct U. S.

[Endorsed:] Original citation.

Service of Process.

233 UNITED STATES OF AMERICA, *ss:*

In the Supreme Court. To the October Term, A. D. 1882.

Error to the supreme court of Illinois.

THE CHICAGO LIFE INSURANCE COMPANY
vs.
THOMAS B. NEEDLES, Auditor of Public Accounts of the State of Illinois.

STATE OF ILLINOIS, *ss:*

I hereby acknowledge the due service, by copy of the writ of error in the above-entitled cause, with an endorsement thereon making the same a supersedeas; also the due service by copy of the citation in said cause.

Nov. 29, A. D. 1881.

THOMAS B. NEEDLES.
Auditor of Public Accounts of the State of Illinois,
By E. B. SHERMAN,
His Solicitor & Counsel.

234 UNITED STATES OF AMERICA, *ss:*

In the Supreme Court. To the October Term, A. D. 1882.

Error to the supreme court of Illinois.

THE CHICAGO LIFE INSURANCE COMPANY
vs.
THOMAS B. NEEDLES, Auditor of Public Accounts of the State of Illinois.

The undersigned, Charles P. Swigert, who is now the auditor of public accounts of the State of Illinois, and the successor in office of Thomas B. Needles, lately such auditor, hereby acknowledges that on this first day of December, A. D. 1881, he received a sworn

copy of the writ of error in the above-entitled cause, with an endorsement thereon, making the same a supersedeas; and also a sworn copy of the citation issued in said cause and returnable to said term.

[SEAL.] CHAS. P. SWIGERT,
Auditor P. A.

[Endorsed:] Service on auditor's successor.

235 UNITED STATES OF AMERICA, *ss:*

In the Supreme Court. To the October Term, A. D. 1882.

Error to the supreme court of Illinois.

THE CHICAGO LIFE INSURANCE COMPANY,
vs.
THOMAS B. NEEDLES, Auditor of Public Accounts of the State of Illinois.

STATE OF ILLINOIS, }
Northern Grand Division, } *ss:*

I, the undersigned, clerk of the supreme court of the State of Illinois for said grand division, do hereby certify that the original supersedeas bond in the above-entitled cause, with an endorsement thereon approving the same as such, and a direction to file the same, and send up a copy with the transcript, was on this sixth day of December, A. D. 1881, received by me and filed in my office.

Witness my hand and the seal of said court, at Ottawa, in said grand division, on the day and year above written.

[SEAL.] E. F. DUTTON, *Clerk.*

[Endorsed:] Proof of filing supersedeas bond.

236 UNITED STATES OF AMERICA, *ss:*

In the Supreme Court. To the October Term, A. D. 1882.

Error to the supreme court of Illinois.

THE CHICAGO LIFE INSURANCE COMPANY
vs.
THOMAS B. NEEDLES, Auditor of Public Accounts of the State of Illinois.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

Horace N. Jones, being first duly sworn, upon his oath says: That on the twenty-ninth (29th) day of November, A. D. 1881, he personally delivered to George M. Bogue, receiver of the Chicago Life Insurance Company, a sworn copy of the writ of error in the above-entitled cause, with an endorsement thereon, making the same a supersedeas.

And this affiant further says that on the same day he also deposited a like copy thereof in the office of the clerk of the circuit court of said Cook county.

HORACE N. JONES.

Subscribed and sworn to before me, this 29th day of November, A. D. 1881.

[SEAL.] LYMAN M. PAINE,
Notary Public.

[Endorsed:] Service on receiver & circuit court.

Endorsed on cover: Illinois supreme court. No. 184. The Chicago Life Insurance Company, plaintiff in error, *vs.* Thomas B. Needles, Auditor of Public Accounts of the State of Illinois. Filed 2nd March, 1882.

Apr. 3/82

J. L. High - for use

113-514

B.

IN THE

Supreme Court of the United States,

(No. 1204)

OCTOBER TERM, A. D. 1881.

THE CHICAGO LIFE INSURANCE COMPANY,

Plaintiff in Error,

vs.

THOMAS B. NEEDLES, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS,

Defendant in Error.

Error to the Supreme Court of Illinois.

MOTION TO VACATE SUPERSEDEAS,

—AND—

POINTS IN SUPPORT THEREOF.

E. B. SHERMAN,

Solicitor and of Counsel for the Auditor of Illinois.

J. L. HIGH, Of Counsel.

CHICAGO:

HORACE O'DONOGHUE, LEGAL PRINTER, PARKER BUILDING, 93•97 WASHINGTON STREET.

1882.

IN THE

Supreme Court of the United States,

(No. .)

OCTOBER TERM, A. D. 1881.

THE CHICAGO LIFE INSURANCE COMPANY,
Plaintiff in Error,

vs.

THOMAS B. NEEDLES, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS,
Defendant in Error.

Error to the Supreme Court of Illinois.

MOTION TO VACATE SUPERSEDEAS,

—AND—

POINTS IN SUPPORT THEREOF.

E. B. SHERMAN,

Solicitor and of Counsel for the Auditor of Illinois.

J. L. HIGH, Of Counsel.

CHICAGO:

HORACE O'DONOGHUE, LEGAL PRINTER, PARKER BUILDING, 95-97 WASHINGTON STREET.

1882.

MOTION TO VACATE SUPERSEDEAS.

And now comes the said defendant in error, by E. B. Sherman, his solicitor, and moves the court to vacate and discharge the order heretofore made in said cause by Mr. Justice HARLAN, making the writ of error therein a supersedeas, for the reasons hereinafter specified and set forth.

E. B. SHERMAN,
Solicitor for Defendant in Error.

J. L. HIGH,
Of Counsel.

STATEMENT OF CASE.

The Legislature of Illinois, on the 16th day of February, 1865, granted a charter of incorporation to the Traveler's Insurance Company, thereby conferring upon said company the power to transact the business of an accident insurance company, which charter is hereto appended as Exhibit "A."

By an amendment to said charter, approved February 21, 1867, the name of said company was changed to the Chicago Life Insurance Company, and it was authorized to do a general life insurance business, and was to that end granted new and enlarged powers of a valuable character, which amendment is hereto appended as Exhibit "B."

Section 5 of said amendment provides as follows:

"This act, and the act to which this is an amend-
"ment, shall not be deemed to exempt said company
"from the operation of such general laws as may be here-
"after enacted by the General Assembly on the subject of
"life insurance."

On the 29th day of March, 1867, said amendment to the charter, of which the foregoing was a part, was formally adopted by the company, by virtue whereof said company is expressly made subject to the insurance laws of 1869 and 1874, and thenceforth the said company transacted its business under the name of the Chicago Life Insurance Company, and is the plaintiff in error in this cause. Before such change of name, one hundred thousand dollars of stock had been subscribed for, and 10 per cent. thereof had been paid in cash, which is the only payment ever made in cash upon such stock subscriptions, with perhaps one exception. The remainder of such subscriptions to the stock, after the change of its corporate name, was professedly paid for by the notes of the stock subscribers, payable in nearly all cases on demand, and without interest, the payment of which notes was never demanded by the company, and secured by a deposit of real estate and other collaterals. The company, with no other capital or resources whatever, began to do business in 1867.

In March, 1869, the General Assembly of Illinois passed an act, entitled "An act to organize and regulate the business of life insurance," and such parts of that act as are pertinent, are hereto appended as Exhibit "C."

In 1874 the General Assembly of Illinois passed an act, entitled "An act in regard to the dissolution of insurance companies," which is hereto appended as Exhibit "D."

From 1871 up to 1876, the company made annual sworn reports to the Auditor of State, pursuant to the law of 1869, in all of which the capital stock of said company, to the amount of $125,000, was stated to be fully paid up in cash. In 1871 the company began to declare dividends to the stockholders thereof, and such dividends were regularly declared by the company and drawn by said stockholders thenceforth, and the amount of such

dividends from August, 1871, to February, 1877, was $55,045; and this was done in direct violation of article 19 of the by-laws of the company, which provides that all dividends shall be applied in payment of capital stock subscribed, until the same shall be fully paid. All the directors and officers were stockholders, and as such received such dividends so illegally and improperly made. During all this time, while such dividends were being so drawn, the company was not in a condition to justify the paying of any dividends whatever, and during much of that time the company was really insolvent.

In the annual sworn statements made to the Auditor December 31, 1873, 1874, 1875 and 1876, there were included and scheduled as part of the assets of said company, a large amount of property, for which it had never paid, and which it did not own.

In 1876 such securities so scheduled and which did not belong to the company amounted to $89,422. In part of said reports was scheduled as an asset of the company $15,000, which was the property of its President, and which the company did not own in whole or in part. These reports were sworn to by the President and Secretary of the company, and were prepared under the direction of the Secretary, and the fact that they were false was known to him, if not to the other officers of the company, and any officer or director of the company could have ascertained that they were false, since the books of the company themselves were correctly kept in this particular, and clearly showed that such statements were false and fraudulent. The substance of said reports was tabulated into little circulars and sent broadcast over the country for the purpose of securing business.

The receipts of the company, as shown by its books, also varied largely from its receipts as shown in its sworn reports to the Auditor. From 1871 to 1876 this discrepancy varied from $9,000 to $30,000 per annum, and the

total receipts of the company for these years, as shown by the sworn reports to the Auditor, were $1,022,529.75; and the total receipts for the same period, as shown by the books, were $927,523.29, thus showing that the officers of the company have sworn to receiving $95,006.46 more than its actual receipts, as shown by the books of the company. At the same time the books of the company and the reports to the Auditor show a like discrepancy as to the actual disbursements.

From 1871 to 1876 the disbursements, as shown by the company's books, were $839,627.97, and, as shown by said reports, they were $856,074.41, thus showing the expenses of the company, as reported to the Auditor, to be $22,777.50 more than they actually were. Of all these things, also, the Secretary had actual knowledge, and the books were manipulated, and the false reports prepared by the Secretary, or under his direction; and any officer or director of the company could have ascertained the falsity of the sworn reports from the books themselves.

In January, 1877, Thomas B. Needles became Auditor of Public Accounts, and in June of the same year he caused an examination to be made of the affairs of the company, and the report of the examiner to the Auditor, made on the 6th day of July, 1877, sets forth that the company had been doing a losing business for years; its income was small and decreasing; its salaries and expenses were large; that large annual dividends had been made to the stockholders, which were not warranted by the condition of the company; that interest had not been collected upon the securities upon which the capital stock was based; that the last annual statement to the Auditor had included $79,000 of assets which did not belong to the company; that when the examiner was ready to trace the assets through the cash to see whether the company actually owned the assets it claimed, John W. Clapp, the secretary of the company, suddenly disappeared; that

the value of the assets of the company was $196,685, the liabilities $344,857, including net present value of policies on 4 per cent. basis, an impairment of $148,-171.58; that on a 6 per cent. basis the impairment was $75,205.58; that the company was insolvent within the meaning of the statute, and recommending that proceedings be taken to wind up its affairs. All these statements made by the examiner were true, and the condition and management of the company were even worse than by the examiner's conservative report they were represented to be.

On June 30, July 1 and July 3, after the absconding of the secretary, and the disclosure of the real condition and history of the company, long and sensational articles were published in all the daily papers of Chicago, in which it was represented that Clapp had stolen nearly all the assets of the company, squandered the same in speculation, and having wrecked the concern, had fled the country, which statements were subsequently, in later accounts, somewhat modified. After the fact of such impairment of the capital had been communicated by the examiner to the board of directors, the company requested the Auditor not to file his petition to close up its affairs, but to wait and permit and assist in some method whereby a temporary re-insurance might be made, and ultimately the insurance risks of the company, at least, should be transferred to some other life insurance company. The Auditor, being advised by his counsel and by the Attorney General that he had no right, under the law, to grant this request, declined to permit such proceeding. Whereupon a meeting of the board of directors of said company was held and the following motion was adopted: "That "Daniel Goodwin, Jr., be recommended to the court as "the choice of this board for the position of receiver." And also, "that if Daniel Goodwin, Jr., be not appointed

"by the court as receiver, that George M. Bogue be the "second choice of this board for that position."

Two days thereafter, as contemplated by the proceedings of said company, the Auditor filed in the Circuit Court of Cook County a petition setting forth that he had caused such examination to be made, that the result thereof and the condition, assets and liabilities of said company appeared in a schedule thereto annexed, and which was made a part thereof; that from such examination he was of the opinion that the condition of said company was such as to render its further continuance in business hazardous to the insured therein, and praying for an injunction and a receiver with the usual powers.

On the same day an order was entered by the court, on notice to the plaintiff in error, which appeared by its counsel, enjoining the said company from further proceeding with its business until the further order of the court, and appointing George M. Bogue receiver thereof, on his giving bond in the sum of $200,000, with sureties to be approved by the court, which was done, and such receiver thereupon took possession of the assets of the company.

On the 20th day of July, 1877, plaintiff in error filed its petition, alleging that a proposition had been made before the cause was commenced, to reinsure the risks thereof; that the Auditor had refused to permit the same to be carried out; that the negotiation was still open; that it would be for the benefit of the policy holders if adopted; that the company did not intend or desire to transact any new business; and praying the court to permit the administration of the assets of the company to proceed thenceforth under the receiver and the company concurrently, which petition, on hearing, the court refused to grant. The proposition referred to in said petition was attached thereto, and distinctly disavowed being a proposition, but merely in the nature of sugges-

tions, and was, in fact, a scheme for reinsuring the best risks of the company for the best assets thereof, and leaving the poorer risks to their fate, which, as was admitted, might ultimately require the filing of a petition by the Auditor and the appointment of a receiver. (Said petition is hereto appended as Exhibit "E.")

In the course of the administration of the estate, the receiver, on the 26th day of October, 1877, filed a petition asking the direction of the court in regard to the policy liability of the company and the mode of ascertaining its value. And on the 31st day of October an order was entered directing him to ascertain the net present value of each policy on the basis of the American table of mortality, with interest at the rate of 4 per cent. per annum, which was done, and such computation made by John J. Brinkerhoff, actuary of the State department, showing the net surrender value of such policies to be $320,013.99, and the unpaid death losses $14,800, which was embodied in the report of the receiver filed in said cause soon thereafter. Subsequently an order was entered by the court directing such receiver to pay a dividend of 10 per cent. of the amount of their claims as so fixed, which was done. The record does not show any actual notice to the company of these proceedings in the matter of fixing the policy liability. The present condition of the estate in the hands of the receiver is shown by his affidavit, hereto appended and marked Exhibit "G."

The receiver proceeded with the administration of the estate, sold and conveyed real property, collected debts, including the notes given for stock subscriptions by some of the officers of the company, instituted and defended a score of suits, and made disbursements under the order of court; but during all this time, nearly four years, no steps were taken by the company, asking for the dissolution of such temporary injunction, or the dis-

charge of the receiver, nor in opposition to any of his acts as such.

On the first day of April, 1881, the Auditor filed his motion to make the injunction theretofore granted perpetual, which motion, on notice to the company, was set for hearing on the 19th day of April, 1881. Such hearing was had, and on the 2d day of July, 1881, the court entered a decree perpetually enjoining said defendant from carrying on its business. Immediately thereafter the receiver filed a bill against the stockholders of the company to recover $55,045, being the amount of dividends received by them during the insolvency of the company, and at the same time filed a bill against the directors to recover the entire deficiency of the assets of the company to meet its liabilities, on the ground of their fraud and mismanagement. Thereupon a writ of error was taken from the Supreme Court of Illinois, to reverse the decree of the Circuit Court granting the final injunction, and the cause was heard at the September Term, 1881, of said court, and the decree of the court below was affirmed; and an opinion filed, which is hereto appended as Exhibit "F." Thereupon, on the 23d day of November, 1881, upon petition of said company, a writ of error was granted to remove the said cause to this court, and the same was made a *supersedeas*, by order of Mr. Justice HARLAN, upon the filing of a bond in the sum of $1,000.

Points on Motion to Vacate Supersedeas.

Insisting that the act of the General Assembly of 1869, regulating life insurance companies, and the act of 1874, for the dissolution of insurance companies, are valid and constitutional; that the reserve power of the State—that power which is inherent in every sovereignty, and which cannot be surrendered even in the grant of a charter,—was ample to authorize the enactment of such statutes; that they do not, in the slightest degree, impair the obligations of the charter contract between the State of Illinois and the plaintiff in error; and that they are in no respect in conflict with the Constitution of the United States; counsel for defendant in error, nevertheless, for the purposes of this motion, refrain from any discussion of this question. And we respectfully submit that whatever may be the opinion of this court upon the constitutionality of such acts in cases where the charter contract was made without any reservation therein of powers subsequently to be exercised by the Legislature, providing for the control or closing up of a corporation; still, in this case, (1) the exercise of this power is so clearly reserved by the charter contract, and (2) the plaintiff in error has so clearly waived its constitutional rights, if it had any, and submitted to the jurisdiction of the Circuit Court, that the administration of the estate by the receiver ought not to be arrested; nor ought he to be restrained from distributing to the policy holders and creditors, in whose interest the proceedings were instituted by the Auditor, the assets which have come to his hands. And in support of our position, we submit the following points:

I.

THE AMENDMENT TO THE CHARTER OF THE PLAINTIFF IN ERROR EXPRESSLY MAKES IT SUBJECT TO THE OPERATION OF ALL GENERAL LAWS THEREAFTER ENACTED BY THE GENERAL ASSEMBLY ON THE SUBJECT OF LIFE INSURANCE; AND SUCH LAWS ARE AS VALID AND BINDING UPON IT AS IF THE SAME WERE A PART OF ITS ORIGINAL CHARTER.

(1.) Sections 5 and 6 of the amendment of the charter, approved February 21, 1867, provide as follows:

§ 5. "This act and the act to which this is an amend-
" ment, shall not be deemed to exempt said company from
" the operation of such general laws as may be hereafter
" enacted by the General Assembly on the subject of life
" insurance.

§ 6. "This act shall be deemed a public act, and
" shall be liberally construed for the purpose therein men-
" tioned; and shall take effect and be in force from and
" after its passage."

On the 28th day of March, 1867, the following resolution was adopted, by the board of directors, formally accepting such amendment:

" OFFICE OF TRAVELER'S INSURANCE CO., }
" CHICAGO, March 29, 1867. }

" At a meeting duly called of the directors of the
" company, the following members of the board were
" present:

" Charles L. Currier, Allen Gibson, E. Frankenthal,
" Simon Florsheim, Jno. W. Clapp; C. L. Currier, Vice
" President, in the chair.

" A quorum being present, motion was made and
" carried, that hereafter the amendment to the charter of
" the company be adopted, and that hereafter the company
" be known as Chicago Life Insurance Company, but that
" all contracts previously made by the company under the

"old name of Traveler's Insurance Company be consid-
"ered valid and binding upon Chicago Life Insurance
"Company."

(2.) It was competent for plaintiff in error, in consideration of the grant by the State to it in the amended charter, of new and enlarged powers, to agree to and with the State, that it should be subject to all general laws thereafter to be enacted by the General Assembly, on the subject of life insurance, even if that involved a surrender of a part of the powers or rights granted by the terms of the original charter.

(3.) By formally accepting such amendment, and exercising the powers thereby granted, it did so solemnly contract with the State, and from such contract it can be released only by the General Assembly of the State of Illinois.

(4.) All general laws on the subject of life insurance, when thereafter enacted, including the laws of 1869 and 1874, became *eo instanti*, by virtue of this amendment, a part of the charter contract itself, and *pro tanto* a limitation of the original grant, of which every one dealing with it was bound to take notice, it being, by its terms, a public act.

(5.) Hence the plaintiff in error is, by its own solemn contract contained in the instrument by which it was authorized to engage in the business of life insurance, forever estopped from declaring such general laws, or any part thereof, to be invalid, unconstitutional, or in contravention of the terms or spirit of its charter.

II.

THE DECISION OF THE SUPREME COURT OF ILLINOIS IN THIS CAUSE, IN SO FAR AS IT IS A CONSTRUCTION OF THIS CHARTER CONTRACT MADE BETWEEN THE STATE OF ILLINOIS AND PLAINTIFF IN ERROR, IS FINAL, AND BINDING UPON THIS COURT.

(1.) The charter, and the amendments thereto, granted by the State and accepted by the company, con-

stitute a contract wholly voluntary on the part of the company, and as such cannot be in conflict with the Constitution of the United States.

(2.) The Supreme Court of Illinois has expressly decided, that by accepting the said amendment, the plaintiff in error became subject to the said laws of 1869 and 1874. (*Vide Appendix.*)

(3.) "As a rule, we treat the construction which the "highest court of a State has given to the statute of a "State as part of the statute, and govern ourselves "accordingly."

Douglas v. *County of Pike*, 101 U. S. 686, and cases cited.

III.

PLAINTIFF IN ERROR, BY ITS VOLUNTARY ACTS, SUBMITTED TO THE RESTRICTIONS, AND PRETENDED TO CONFORM TO THE LAW OF 1869, WHILE CARRYING ON THE LIFE INSURANCE BUSINESS, THEREBY VIRTUALLY MAKING THAT ACT A PART OF ALL ITS CONTRACTS OF INSURANCE; AND IT CANNOT NOW BE HEARD TO OBJECT TO THE VALIDITY THEREOF.

(1.) It made a deposit of a guarantee capital, pursuant to section 1 of said act.

(2.) It made, in 1871, 1872, 1873, 1874, 1875, and 1876, sworn statements to the Auditor, pursuant to sections 5 and 6 of said act.

(3.) It was repeatedly examined by the Auditor, pursuant to section 12 of said act.

(4.) Its policies were valued in the manner and upon the basis prescribed in section 10 of said act, and such valuation was made a part of its sworn report to the Auditor.

(5.) It advertised and obtained its business by means of such pretended compliance with the law.

(6.) Nearly every contract of insurance was made by the company after the passage of the act of 1869, and after the company had publicly and notoriously pretended to submit and conform thereto; hence that act, in so far as it operates to protect the interests of such policy holders, became a part of the policy contract.

IV.

IT IS WELL SETTLED, THAT CONSTITUTIONAL AND LEGAL RIGHTS MAY BE WAIVED.

1. "Where a constitutional provision is designed for "the protection solely of the property rights of the citi- "zen, it is competent for him to waive the protection, and "to consent to such action as would be invalid if taken "against his will."

Cooley Const. Lim., 219.

2. "A waiver may be either expressed or implied. "An implied waiver growing out of the circumstances of "the case, and the conduct of the parties and their attor- "neys in the cause, may be as effectual as an express "waiver."

Ranson v. *New York*, 4 Blatchf. 157.

V.

PLAINTIFF IN ERROR HAS ACQUIESCED IN AND CONSENTED TO THE PROCEEDINGS IN THIS CAUSE, AND HAS THEREBY WAIVED ITS RIGHT TO OBJECT TO THE SAME.

(1.) By the deliberate vote of the board of directors recommending Daniel Goodwin, Jr., as its receiver, and George M. Bogue as its second choice.

(2.) By appearing in the Circuit Court by counsel, July 7, 1877, and presenting the name of Goodwin, and assenting to the appointment of Bogue as receiver.

(3.) By delivering to such receiver, without protest, all its assets.

(4.) By filing its petition July 20, 1877, assenting to the receivership.

(5.) By permitting, without protest, the marshaling and distributing of its assets by the court for nearly four years.

(6.) By permitting itself to be temporarily enjoined from July, 1877, to April, 1881, without moving to dissolve or modify such injunction.

The evident and conceded object in arresting the administration of the estate of plaintiff in error in the hands of its receiver is, to shield the directors and stockholders thereof, against whom suits have been commenced by the receiver, to recover from them, for the benefit of the policy holders, the deficiency caused by them in the assets of the company. We respectfully submit that this court ought not to permit its writ of *supersedeas* to give aid and comfort to those seeking to evade their just liability to those whom they have despoiled under circumstances meriting the severest animadversions. The history of the plaintiff in error from its inception has been a record of unblushing fraud and perjury, and its policy holders have been systematically deceived and defrauded. When the Auditor, in the discharge of a public duty, and in the interest of its 2,200 policy holders, arrested its criminal career, and invoked the aid of a court of equity, the company submitted and acquiesced in the proceedings, until the stockholders, who had unlawfully plundered from the company $55,045 in dividends, and the directors, who had fraudulently caused or permitted an impairment of the capital of the company of about $150,000, were called upon to make good this deficiency. In the name of these victimized policy holders, despoiled of their substance, we enter our solemn protest against this attempt to perpetrate such a wrong as this. On the hearing of this cause on its merits, for the reasons above set

forth, the judgment of the Supreme Court of Illinois cannot be reversed by this august tribunal. We respectfully submit that the writ of *supersedeas* should be discharged.

E. B. SHERMAN,

Solicitor for Defendant in Error.

JAMES L. HIGH,

Of Counsel.

EXHIBIT "A."

THE CHARTER AND AMENDMENTS.

An Act to incorporate the Travelers' Insurance Company:

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That Harmon G. Reynolds, J. H. Currier, D. W. Page, Charles L. Currier, Simon Florsheim, V. T. Priest and T. J. Turner, and all others who may become associated with them as stockholders, as is hereinafter provided, their successors and assigns, forever, be and they hereby are created and made a body politic and corporate, for the purpose of insuring persons against the accidental loss of life, or personal injury sustained while traveling by railway, steamboat, or other mode of conveyance, and such other kinds of insurance as the directors of this corporation shall deem expedient, by the name of the "TRAVELERS' INSURANCE COMPANY," and by that name shall be and hereby are empowered to purchase, have, hold, possess and enjoy, to themselves and their successors, lands, tenements, hereditaments, goods, chattels and effects of every kind; and the same to grant, alien, sell, invest and dispose of; to sue and be sued, plead and be impleaded, in all courts of justice; to have and use a common seal, and the same to change, alter and renew at pleasure; and to ordain and put into execution such by-laws and regulations as they may deem proper for the well ordering and government of said corporation, and the transaction of its business: *Provided*, They be not repugnant to the laws of the United States, or of this State, or to the provisions of this act of incorporation.

SEC. 2. The capital stock of said corporation shall not be less than one hundred thousand dollars, and may be at any time hereafter increased by said company to any sum not exceeding five hundred thousand dollars, and shall be divided into shares of one hundred dollars each; and there shall be paid into the treasury of said corporation by each subscriber to said capital stock, at the time of subscribing for the same, an installment of 10 per cent. on the amount by him subscribed for, and further installments shall be made from time to time, as may be ordered by the Board of Directors; and the remainder of the said shares so subscribed for shall, within thirty days after the organization of said company, be secured, to be paid either by bonds and mortgages on real estate, by indorsed promissory notes, or in such other manner as may be required by the by-laws of said company, and approved by the Board of Directors thereof.

SEC. 3. The capital stock of said corporation shall be transferable according to the rules and regulations of the company; and if any subscriber of any share or shares of said stock shall neglect or refuse to pay the installments as aforesaid for the space of sixty days after the same shall become due or required, and after he or they have been notified thereof, according to the by-laws of said company, the amount already paid by such negligent stockholder shall be forfeited to the uses of the company, and the stock by him subscribed shall be sold at auction or disposed of in such manner as the Board of Directors may deem for the best interests of the company.

SEC. 4. The business of said corporation shall be the insuring of persons against the accidental loss of life or personal injury sustained while traveling by railways, steamers and other modes of conveyance in the United States and other countries; and contracts of insurance may be made on such terms and conditions, and for such periods of time, and confined to such persons as shall be, from time to time, ordered and provided for by the by-laws of said corporation.

SEC. 5. The home office of said company shall be located in the city of Springfield, or city of Chicago, as the Board of Directors may determine; and the stock, property and affairs of said corporation shall be managed and conducted by not less than five, nor more than fifteen directors, the number of said directors to be determined by the by-laws of said company; and any director's power to act as director of said company may be canceled or suspended whenever a majority of the board shall deem it for the best interests of the company so to do. The directors of said company shall be chosen from among the stockholders in such manner and at such time or times as may be determined by the by-laws of said corporation; and in case of any vacancy from death, resignation or other cause, in the Board of Directors of said company, the remaining directors shall have power to fill such vacancy by appointment, and the director thus appointed shall hold his office until the next regular election, as provided by the by-laws of the company. In all elections for directors of said company, each stockholder, by himself or attorney, shall be allowed one vote for each and every share so held by him, and none but stockholders shall be eligible to the office of director.

SEC. 6. To carry out the provisions of this act, the corporators hereinbefore named are hereby constituted the first Board of Directors of said company, and shall hold their office until an election be had according to the by-laws of said corporation; and they, or a majority of them, are authorized to open books and receive subscriptions to the capital stock of said company; and when the amount of one hundred thousand dollars shall have been subscribed according to the requirements of this charter and the by-laws of said corporation, the Board of Directors shall cause publication to be made in one newspaper published in the city of Chicago, and one newspaper published in the city of Springfield, of the full and complete organization of said company; and it shall be lawful for said company to commence business within thirty days after publication shall have been made, as aforesaid.

SEC. 7. The Directors shall choose a President, Vice President, Treasurer and Secretary, whose term of office and several duties shall be defined and set forth by the by-laws of the corporation; and they shall appoint such other officers, clerks and agents, and establish such agencies in this State and elsewhere as shall be by them deemed advisable for conducting the business of the company; and the President and Vice President, Treasurer and Secretary shall be chosen from and by the directors of said company.

SEC. 8. All policies of insurance or other contracts authorized by this act may be made with or without the seal of said corporation, and shall be binding and obligatory upon said corporation, according to the true intent and meaning of such policies and contracts.

SEC. 9. The capital stock, moneys and personal estate of said corporation may be invested, at the discretion of the directors, either in loans upon bonds and mortgages, upon real estate, or in United States stocks, bank stocks, or stocks or bonds created by any State, or of corporations created by this State; and the same may be called in and re-invested at pleasure under the provisions of this act:

Provided, That nothing herein contained shall be construed so as to authorize said company to be engaged in the business of banking.

SEC. 10. This act shall be deemed a public act, and be liberally construed for the purposes therein mentioned, and be in force from and after its passage.

Approved February 16, 1865.

UNITED STATES OF AMERICA, }
STATE OF ILLINOIS. } ss. OFFICE OF SECRETARY.

I, Edward Rummel, Secretary of the State of Illinois, do hereby certify that the foregoing is a true copy of an enrolled law of the State of Illinois, entitled "An act to incorporate the Travelers' Insurance Company," approved February 16, 1865, now on file in this office.

In witness whereof, I hereto set my hand and affix the great seal of State, at the city of Springfield, this 7th day of March, A. D. 1872.

[L. S.] EDWARD RUMMEL,

Secretary of State.

EXHIBIT "B."

An Act to amend the charter of the Travelers' Insurance Company, of Chicago, Illinois.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the name of the "TRAVELERS' INSURANCE COMPANY, of Chicago, Illinois," be and the same is hereby changed to "CHICAGO LIFE INSURANCE COMPANY"; such change in nowise to affect any of the acts and things done by said company previous to the passage of this act.

SEC. 2. The said company shall have power to make insurance upon the lives of individuals, and upon the lives of persons connected by marital relations to the persons applying for insurance; and also upon the lives of persons in whom the applicant has a pecuniary interest as creditor or otherwise; to secure trusts, grants, annuities and endowments, and purchase the same, in such manner and for such premiums and considerations as the Board of Directors or Executive Committee shall direct. The Board of Directors may collect and sell its securities, and re-invest the proceeds thereof; and may accumulate a contingent capital by receiving conditional notes for insurance at the time of insuring any person or persons; such notes to be paid in the way and manner provided for in the note or notes, and by the by-laws of the said company, and the said notes shall not be taxed until paid.

SEC. 3. Whenever the cash accumulations of said company shall amount to one hundred thousand dollars, over and above the paid-up capital stock of said company, it shall be lawful for the directors of said company to retire the paid-up capital stock, and conduct the future business of said company on the plan of mutual life insurance. Contracts of insurance may be made on such terms and conditions and for such periods of time as shall be, from time to time, ordered and provided for by the by-laws of said company, and agreed upon in the contracts for insurance.

SEC. 4. Section fourth of the charter of the Travelers' Insurance Company is hereby made to read as follows: "The directors of said company may appoint three of their members an Executive Committee, who shall have all the powers of the Board of Directors, when the Board of Directors is not in session. Said company may divide insurance into classes, and the premiums received shall be appropriated to the payment of losses and expenses of the class to which they belong; and may conduct insurance both upon the plan of stock and mutual life insurance."

SEC. 5. This act and the act to which this is an amendment shall not be deemed to exempt said company from the operation of such general laws as may be hereafter enacted by the General Assembly on the subject of life insurance.

SEC. 6. This act shall be deemed a public act, and shall be liberally construed for the purpose therein mentioned, and shall take effect and be in force from and after its passage.

Approved February 21, 1867.

UNITED STATES OF AMERICA, } ss.
STATE OF ILLINOIS. } OFFICE OF SECRETARY.

I, Edward Rummel, Secretary of the State of Illinois, do hereby certify that the foregoing is a true copy of an enrolled law of the State of Illinois, entitled "An act to amend the charter of the Travelers' Insurance Company, of Chicago, Illinois," approved February 21, 1867, now on file in this office.

In witness whereof, I hereto set my hand and affix the great seal of State, at the city of Springfield, this 29th day of February, A. D. 1872.

[L. S.] EDWARD RUMMEL,
Secretary of State.

EXHIBIT "C."

INSURANCE LAW OF ILLINOIS IN PART, 1869.

36. GUARANTEE CAPITAL—INVESTMENT OF.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That before any life insurance company goes into operation, under the laws of this State, a guarantee capital, of at least $100,000, shall be paid in money and invested in the stocks of the United States or of this State, or of any city or town in this State, estimated at their market value, or in such other stocks and securities as may be approved by the Auditor of Public Accounts, or in mort-

gages being first liens on real estate in this State, the said real estate being worth at least twice the amount of the money loaned thereon, with abstract showing a good and sufficient title, and the certificate of two reputable landholders, under oath, certifying to the value of said property.

37. EXAMINATION BY AUDITOR—FEE.] § 2. No policy shall be issued until a certificate from the Auditor has been obtained authorizing such company to issue policies. The said Auditor shall examine the capital, and the majority of the directors shall make oath that the money has been paid in by the stockholders towards payment of their respective shares and not for any other purpose, and that it is intended that the same shall remain as the capital of the company, to be invested as required by the laws of this State. Every insurance company incorporated in this State shall pay to said Auditor, for the examination required by this section, the sum of $30.

40. ANNUAL STATEMENT.] § 5. Every life insurance company incorporated in this State, or doing business in this State, shall, on or before the first day of March in each year, transmit to the Auditor and file in his office a statement of its business standing and affairs, in the form prescribed or authorized by law, and adapted to the business done by such company, signed and sworn to by the president or vice president and secretary, and made out for the year ending on the preceding thirty-first day of December.

41. FORM OF STATEMENT.] § 6. The form for life insurance companies shall be as follows: 1st. Name of the company. 2d. When chartered. 3d. For what period. 4th. Where located. 5. State in full the assets of the company. 6th. Number of shares owned in any bank; state par value, cost and the market value per share. 7th. Number of shares owned in any railroad, stating the corporate name of each and the amount invested in each, at cost, on its books; state the par value and the market value of each share. 8th. Amount owned in railroad bonds; state par value, cost and market value per share. 9th. Amount invested in real estate, at cost, on the books of the company. 10th. Amount loaned on mortgages of real estate, and estimated value of said real estate. 11th. Amount loaned on notes secured by collaterals of personal property. 12th. Amount loaned on notes without collaterals. 13th. State in full all other investments. 14th. How much included in the foregoing statements of assets consists of premium notes on policies not returned as now in force. 15th. Number, date, kind and amount of each outstanding policy, and age of the insured, excepting such policies as are subject to a valuation by the proper officer in some other State, which shall be shown by certificate from the insurance department of such State. 16th. Number and amount of each class or kind of policies which have within the year ceased to be in force; how terminated; what has been paid to the legal holders of policies. 17th. Amount of losses ascertained and unpaid. 18th. Amount of losses claimed against the company, whether acknowledged as due or not by the company. 19th. Amount due from the company on its declared, promised or acknowledged indebtedness, or other claims, including dividends, bonuses on distribution of surplus, or as profits. 20th. Amount received for premiums the past year. 21st. Amount received for premiums in cash. 22d. Amount received for premiums in promissory notes or securities. 23d. Amount

received for interest the past year. 24th. Amount paid for interest the past year. 25th. Amount of guarantee funds, and state particularly whether the same are in cash or subscription notes. 26. How are dividends, distributions of surplus funds, bonuses or estimated profits paid? whether in cash, scrip or otherwise on credit, and whether on demand; or, if on credit, for what length of time, and whether payable at a specific time or indefinitely, at the discretion of the company. 27th. Amount paid for the expenses, taxes and commissions the past year, classified.

44. PENALTY.] § 9. Any company doing business in this State neglecting to make returns, in the manner and within the time hereinbefore authorized and prescribed, shall forfeit $100 for each day's neglect; and every company that willfully makes false statements shall be liable to a fine of not less than $500 nor more than $1,000. Any new business done by any company or its agents in this State, after neglect to make the prescribed returns, shall be deemed to be done in violation to law.

45. WHEN COMPANIES MUST STOP ISSUING POLICIES.] § 10. When the actual funds of any life insurance company doing business in this State are not of a net value equal to the net value of its policies, according to the "combined experience," or "actuary's" rate of mortality, with interests at four per centum per annum, it shall be the duty of the Auditor to give notice to such company and its agents to discontinue issuing new policies within this State until such time as its funds have become equal to its liabilities—valuing its policies as aforesaid. Any officer or agent who, after such notice has been given, issues or delivers a new policy, from and on behalf of such company, before its funds have become equal to its liabilities as aforesaid, shall forfeit, for each offense, a sum not exceeding $1,000.

46. INVESTMENT OF FUNDS.] § 11. It shall be lawful for any company, organized in this State, to invest its funds or accumulations in the stocks of the United States, or of this State, or of any city or town in this State, or in any national bank, or in such other stocks and securities as may be approved by the Auditor, or in mortgages (being first liens) on real estate being worth at least twice the amount of money loaned thereon.

47. INVESTMENT IN OTHER STATES.] § 12. When any life insurance company, organized under the laws of this State, shall transact business in any other State, it may invest it surplus funds in such State in like security and under the same restrictions as in this State.

48. INQUIRIES BY AUDITOR—REVOKE CERTIFICATE.] § 13. The Auditor is hereby authorized and empowered to address any inquiries to any life insurance company, or to the secretary thereof, in relation to its doings or conditions, or any other matter connected with its transactions; and it shall be the duty of any such company so addressed to reply promptly, in writing, to any such inquiries; and all such companies not incorporated under the laws of this State, failing to answer all such inquiries, shall not be authorized to transact any business in this State, and their certificates of authority may be revoked and canceled.

EXAMINATION BY AUDITOR.] It shall be the duty of the Auditor to make or cause to be made an examination of the condition and affairs of any life insurance company doing business in this State whenever he shall deem it expedient to do so; and also whenever he shall have good reason to suspect the correctness of any annual statement, or that the affairs of any company making such statements are in an unsound condition.

EXHIBIT "D."

ACT IN REGARD TO THE DISSOLUTION OF INSURANCE COMPANIES, 1874.

84. INVOLUNTARY DISSOLUTION.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That if the Auditor of State, upon examination of any insurance company incorporated in this State, is of the opinion that it is insolvent, or that its condition is such as to render its further continuance in business hazardous to the insured therein, or to the public, or that it has failed to comply with the rules, restrictions or conditions provided by law, or has exceeded, or is exceeding its corporate powers, he shall apply by petition to a judge of any circuit court of this State to issue an injunction, restraining such company, in whole or in part, from further proceeding with its business, until a full hearing can be had, or otherwise, as he may direct. It shall be discretionary with such judge either to issue said injunction forthwith, or to grant an order for such company, upon such notice as he may prescribe, to show cause why said injunction should not issue, or to cause a hearing to be had on complaint and answer, or otherwise, as in ordinary proceedings in equity, before determining whether an injunction shall be issued. He may in all such cases make such orders and decrees, from time to time, as the exigencies and equities of the case may require; and in any case, after a full hearing of all parties interested, may dissolve, modify or perpetuate such injunction, and make all such orders and decrees as may be needful to suspend, restrain or prohibit the further continuance of the business of the company. [See § 23, 25.

85. VOLUNTARY DISSOLUTION.] § 2. When a majority, in number, or interest, of the members or stockholders of any insurance company incorporated in this State, desire to close its concerns, they may apply by petition to the circuit court of the circuit in which the company is located, setting forth in substance the grounds of their application; and the court, after due notice to all the parties interested, may proceed to hear the matter, and for reasonable cause decree a dissolution of the corporation; and corporations so dissolved shall be deemed and held extinct, in all respects as if their charters had expired by their own limitation: subject, however, to the provisions hereinafter prescribed.

86. WHEN CHARTERS EXTINCT.] § 3. The charters of all insurance companies incorporated in this State, which, either from neglect or by vote of their members or officers, or in obedience to the decree of any court, have ceased, or shall hereafter cease, for the period of one year, to transact the business for which they were organized, shall be deemed and held extinct in all

respects, as if they had expired by their own limitation; and the circuit court shall have authority, upon application, by the petition of the Auditor of State, or of any person interested, to fix, by decree, the time within which such companies shall close their concerns: *Provided*, that this section shall not be construed to relieve any such company from such liabilties to the assured or any of its creditors.

87. CONTINUED AS TO CREDITORS, ETC.] §4. Insurance companies whose charters expire by their own limitatation, or become forfeited by non-user, or are dissolved by decree of court, or otherwise, shall, nevertheless, be continued bodies corporate for the term of two years after such expiration, forfeiture or dissolution, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and divide their capital stock and assets, but not for the purpose of continuing the business for which they were organized.

88. APPOINTMENT OF RECEIVER—HIS POWERS.] §5. When the charter of any such insurance company expires, is forfeited, or annulled, or the corporation is restrained from further prosecution of its business, or is dissolved, as hereinbefore provided, the court, on application of the Auditor, or of a member, stockholder or creditor, may, at any time before the expiration of said two years, appoint one or more persons to be receivers, to take charge of the estate and effects of the company, including such securities as may be deposited with the Auditor or Treasurer of State, and to collect the debts due, and property belonging to it, with power to prosecute and defend suits in the name of the corporation, or in their own names, to appoint agents under them, and do all other acts necessary for the collection, marshaling and distributing of the assets of the company, and the closing of its concerns; and when necessary for the final settlement of its unfinished business, the powers of such receivers may be continued as long as the court deems necessary therefor.

89. DUTIES OF RECEIVER.] §6. The receiver shall pay all debts due from the company, if the funds in his hands are sufficient therefor, and if not, he shall distribute the same ratably among the creditors who prove their debts, in such manner as the court may direct, and receivers may be authorized by the court to sell, convey and dispose of, and convert into money, any of the securities or assets of the company, for the purpose of paying such debts, and distributing such funds. If there is a balance remaining after the payment of the debts, the receiver shall distribute the same among those who are justly entitled thereto, as members, stockholders, or otherwise, or their legal representatives.

90. RECEIVERS TO REPORT TO AUDITOR.] §7. Receivers of insurance companies, appointed as aforesaid, shall report to the Auditor of State, annually, in such manner as he shall prescribe, on or before the first day of January, and as much oftener as he may direct, and such reports, or abstracts therefrom, may be incorporated into his annual report on insurance.

91. COMPENSATION AND EXPENSES.] §8. The compensation of receivers, and their expenses, shall be determined by decree of court, but shall not exceed the costs of court, and five per cent. of the amount collected of any of the assets of the company.

92. PRACTICE.] §9. The mode of summoning parties into court, the rules of practice, course of procedure, and powers of courts, in cases arising under this act, shall be the same as in ordinary proceedings in equity in this State, except as herein otherwise provided.

EXHIBIT "E."

PETITION FOR LEAVE TO RE-INSURE, ETC.

On the 20th of July, 1877, a petition was filed by the company, of which the following is an abstract:

Said petition represents that, at the time of the filing of the Auditor's petition, there were pending before the board of directors of said company proposals on behalf of the National Life Insurance Company, U. S. A., for reducing the liabilities of the defendant and ultimately to re-insure or otherwise extinguish or provide for the remaining liabilities of said company, and receive in consideration therefor the assets of said company, a copy of which proposal is attached to said petition; that the proposed plan was in general approved by the Auditor's examiner and actuary, but the Auditor doubted his authority in the premises and refused to delay on account thereof; that the proposition still stands, has not been withdrawn, and can be carried into effect with the approval of the court, and it is the opinion of said examiner and actuary and the petitioner, that under some such plan the policy-holders would realize double what they would receive in dividends under a compulsory conversion of the assets; that nearly all the policy-holders want new policies, and if a satisfactory arrangement cannot be made with the National Life Insurance Company, petitioner believes that some other responsible company will make such an arrangement; that the company, on the completion of the Auditor's examination, suspended business, placed their securities in safe keeping and surrendered them to the receiver on his appointment, and do not intend or desire to transact any new business; that it is important that the company be allowed to act concurrently with the receiver, under the direction of the court, in closing up the affairs of the company; and that it have the assistance of the secretary *pro tem.*, and its counsel, in order that the business of the company and the winding up of its concerns may not be wholly left to the management of persons hitherto unacquainted with its affairs.

Wherefore the petitioning company prays for leave to negotiate with the National Life Insurance Company, or any other party, for such an arrangement as set forth, but not to be carried out without the approval of the court when perfected; that the company might have leave to continue the services of their secretary and counsel in this behalf, to act concurrently with such receiver in the settlement of the affairs of the company, their proper compensation to be allowed by the court and paid out of the assets of said company in due course of administration.

A hearing was had on the foregoing petition, and an order entered by the court overruling the same, and refusing to grant the relief prayed, or any part thereof.

EXHIBIT "F."

OPINION OF SUPREME COURT OF ILLINOIS.

SHELDON, J.: This was a petition filed by Thomas B. Needles, Auditor of Public Accounts of the State, in the Circuit Court of Cook County, at the July Term, 1877, against the Chicago Life Insurance Company, under the act in regard to the dissolution of insurance companies, approved February 17, 1874, praying that the company be enjoined from further proceeding with their business.

Upon final hearing at the July Term, 1881, the court made a decree perpetually enjoining the company from the further prosecution of its business, and the company appealed.

The statute under which the petition was filed authorizes the proceeding whenever the Auditor shall be of opinion that the company is insolvent, or its condition such as to render its further continuance in business hazardous to the insured therein, or to the public, or when the company has failed to comply with the rules, restrictions or conditions provided by law.

The point is made that the statute under which this proceeding is had is, as applying to this company, unconstitutional.

This question of constitutionality is fully settled by the recent decision of this court in *Ward* v. *Farwell*, 97 Ill. 593, where it was decided that this act of 1874 was constitutional, and that it was so as applied to the Republic Life Insurance Company, incorporated under a special charter granted before the passage of the act of 1874, to wit, March 22, 1869, in whose charter no specific reservation of legislative control was contained. By section five of an act amending the charter of the present company, approved February 21, 1867, it is provided as follows: "This act and the act to which this an amendment shall not be deemed to exempt said company from the operation of such general laws as may be hereafter enacted by the General Assembly on the subject of life insurance." Afterward, on March 29, 1867, said amendment to the charter, of which the foregoing was a part, was formally adopted by the company. This strengthens the application of the decision in *Ward* v. *Farwell* to the present case.

There is one point of objection against the constitutionality of the statute made in this case which it is said was not raised in the case of *Ward* v. *Farwell*, viz., that it is a special act regulating the practice in courts of justice and providing a different method of procedure for a single class of corporate persons from that required in all other cases, and thus in violation of section 22 of article 4 of the Constitution of the State, prohibiting the passage of special laws regulating the practice in courts of justice.

This method of procedure is applicable to all insurance companies, and is not special legislation, and does not come within such prohibition. Various other points are made against the validity of the act of 1874; but we consider all of them to have been fully met and decided in favor of the act in *Ward* v. *Farwell*, and that it is unnecessary to notice them further.

It is contended that the proofs do not make a case under the law. It appears from the evidence, that before the change of the corporate name of the company, by the amendment of its charter of February 21, 1867, $100,000 of stock had been subscribed for, and 10 per cent. thereof paid in cash, that being the only payment in cash upon such stock subscriptions, with perhaps one exception; that the remainder of such subscriptions to the stock, after the change of its corporate name, was professedly paid for by the notes of the stock subscribers, payable in nearly all cases on demand, without interest, the payment of which notes was never demanded by the company. The notes were secured by a deposit of real estate security and other collaterals. The company proceeded to do business with no other capital or resources. From 1871 to 1876 the company made annual sworn reports to the Auditor of the State, pursuant to the law of 1869, in all of which the capital stock of the company, to the amount of $125,000, was stated to be fully paid up in cash. In 1871 the company began to declare dividends to the stockholders, which were regularly declared to 1876, the amount being $55,045, and this in violation of a by-law that all dividends should be applied in payment of capital stock subscribed until the same should be paid; and during the time this company was not in a condition to justify the paying of any dividends. In the annual sworn statements made to the Auditor from 1873 to 1876, there was included and scheduled as part of the assets of the company a large amount of securities for which it had never paid, and which it did not own, they amounting, in 1876, to $ 9,422.

The receipts of the company, as shown by its books, varied largely from its receipts, as shown in its sworn reports to the Auditor; such discrepancy in the total receipts from 1871 to 1876, appearing to $93,006.46. There was the like discrepancy as to disbursements, they appearing for that same time, as reported to the Auditor, to be $22,777 50 more than they actually were. In June, 1877, the Auditor caused an examination to be made of the affairs of the company, and when the examiner was ready to trace the securities through the company's cash book, to see whether the company actually owned the securities it claimed, the secretary of the company suddenly disappeared and absconded. It appeared that the value of the assets of the company was $196,635; the liabilities $344,857, including net present value of policies on four per cent. basis, showing a deficiency of assets of $148,171.53. It is attempted to mitigate this unfavorable showing of the financial condition of the company in various ways. As the securities before mentioned stood in the name of the company, the legal title appearing to be in the company, it is claimed that they ought to be regarded as assets of the company. The company had paid nothing for them, and they were not actually the property of the company. It would appear that they had been so taken in the name of the company with the expectation of their becoming its property when it might afterward be in funds and pay for them. They were not *bona fide* assets, and the exhibiting of them as such in the company's reports to the Auditor was deceptive to him, to persons taking insurance, and to the public.

Evidence was introduced that the good will of the company was of the value of $100,000 or $150,000, and it is claimed that this should be counted as assets of the company. The good will of the company would be a poor species

'of assets to pay losses with. And it is funds which will pay losses that an insurance company is required by law to have. The examiner of the condition and affairs of the company, appointed by the Auditor, made report containing among liabilities this item:

"Net present value of policies, actuary's 4 per cent. $333,276, and appended to the footing of liabilities was: Leaving an impairment of $148,171.50. The impairment on the American 6 per cent., or commercial basis, would be $75,205.58." The reason or significance of this last clause appearing in the report is not apparent. But the company's counsel takes advantage of this and insists that the estimate should have been on the last named 6 per cent. basis. So greatly lessening the deficiency of assets as estimated on the 4 per cent. basis. Sec. 10 of the general act for the regulation of the business of life insurance, approved March 26, 1869 (R. S. 1874, p. 634), provides as follows: "When the actual funds of any life insurance company doing business in this State, are not of a net value equal to the net value of its policies according to the 'combined experience' or 'actuary's' rate of mortality, with interest at four per cent. per annum, it shall be the duty of the Auditor to give notice to such company and its agents to discontinue issuing new policies within this State until such time as its funds have become equal to its liabilities, valuing its policies as aforesaid." The four per cent. basis prescribed by this law must certainly govern, and the impairment of the assets of the company upon this basis instead of on the "American six per cent. or commercial basis" must be taken as showing the deficiency of assets. The Legislature in the protection of the public might, to that end, well prescribe what amount of assets and degree of solvency an insurance company should possess and on what basis it should be estimated. It would be a proper exercise of the police power. The validity of such a provision is sufficiently vindicated by the principles laid down in the *Ward* case, and further remark thereon is not required. This company is subjected to the operation of this law by the acceptance of the admendment to its charter before adverted to, made February 1, 1867.

In this connection may be noticed the point made, that this general insurance law has prescribed what shall be the penalty for a deficiency of assets, to wit: that the company shall discontinue issuing new policies until such time as the funds of the company have become equal to its liabilities, and a disregard of that provision by any officer or agent is made punishable by a fine not exceeding $1,000. It is insisted that this is exclusive, and must be the only consequence of deficiency of assets. This general insurance law was passed in 1869. It would surely be competent for a subsequent Legislature in 1874 to prescribe another and different penalty and remedy, and such proceeding as the act of 1874 authorized to be taken may be resorted to, whatever be the law of 1869. Insolvency is one of the causes named for the proceeding under the act of 1874.

It is said, on behalf of the company, that as soon as the impairment of the assets of the company was discovered, the company proposed to the Auditor to effect a re-insurance of all the outstanding risks of the company, and it is claimed that should be taken as making up any deficiency of assets. The evidence is vague as to any offer of re-insurance. It is found in the testimony of the examiner, who, after first stating as his recollection that there were two

offers made to re-insure all the risks of the company in some company satisfactory to him, then proceeds: "My recollection is, that if I communicated with the Auditor, with regard to re-insuring those risks, it was on a proposition made by some other company to do what we call twist the policies, not for the company to re-insure all of its risks at once, but to give another company the privilege of coming in and issuing new policies of its own to each individual policy-holder on such terms as they could make with the policy-holders themselves, and take their pay out of such assets as they might choose of the company. I think there was a proposition of that kind made, and I think it was refused either by myself or after communication with the Auditor."

The real ground of complaint would seem to be, that the Auditor proceeded in the precise course pointed out by the statute, and did not go outside of his duty and stop to negotiate and bargain with the company. We cannot make out of this alleged offer of re-insurance anything which should be held as a defense to this proceeding, or be taken as making up the company's deficiency of assets.

As the matured liabilities of the company at the time of commencing the Auditor's suit did not exceed $8,400, which could be paid on demand, it is contended that the company was not insolvent; and authorities are cited to the effect that where a debtor is able to meet all his engagements as they become due, in the ordinary way, he is solvent. It is a higher standard of solvency than this which our law requires of insurance companies. The general insurance law before referred to directs that where the actual funds of any life insurance company are not of a net value of its policies according to the mode of valuation there named, that the Auditor shall notify the company to discontinue issuing new policies until such time as its funds have become equal to its liabilities, valuing its policies as directed. This is an expression of the sense of the Legislature, of the degree of solvency a fire insurance company should have; and it requires its assets to be equal to the amount of its liabilities, whether due or not. We think the company was insolvent within the province of the insurance law.

The point finally made is, that all there was of wrong in the management and condition of the company is to be laid to the charge of the secretary of the company alone; that all the other officers and agents of the company had acted in good faith, were guiltless of any wrong-doing, and hence it should be taken that there was no willful default on the part of the company, and it should not be subjected to this proceeding. The company could act only through its officers and agents, and should be held responsible for the acts of and mode of management by its secretary, and the result therefrom. It is the management and condition of the company rendering its continuance in business hazardous to the public, which entitles to this proceeding, without regard to what one or how many of the company's officers participated in the mismanagement or the bringing about of such condition. The public should have the protection which the law has provided against the unsafe doing of business by insurance companies. The hazard to the public is the same, whether one or more of the company's officers were concerned in producing it; and whether or not it resulted from the willful default or misconduct of the company, we cannot say

that the court below was not justified in finding from the evidence that the condition of the company was such as to render its further continuance in business hazardous to the insured therein and to the public; and the decree will be affirmed.

Decree affirmed.

EXHIBIT "G."

In the Supreme Court of the United States—ss.

THE CHICAGO LIFE INSURANCE COMPANY,
Plaintiff in Error,
vs.
THOMAS B. NEEDLES, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS,
Defendant in Error.

Error to Supreme Court of State of Illinois.

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

George M. Bogue, being duly sworn, deposes and says, that he is the receiver of the Chicago Life Insurance Company, and was appointed such receiver on the 7th day of July, A. D. 1877, by the Circuit Court of Cook County, Illinois, in the case of *Thomas B. Needles, Auditor of Public Accounts of the State of Illinois*, against *The Chicago Life Insurance Company*, being the same cause to reverse which the writ of error herein has been sued out, and that he has ever since continued to act as such receiver.

Affiant further states, that at the time of the failure of said company, and his appointment as such receiver, the outstanding policies of the company amounted to 2,496 in number, and that the entire present liability of said company upon such policies, as fixed by the actuary of the Insurance Department of the State of Illinois, under the order of said Circuit Court of Cook County in said cause, and as fixed by the orders of said court, is $375,083.53; that upon this liability, affiant, as such receiver, has already paid a dividend of 10 per cent.; and that the remaining assets of said company in his hands as such receiver would, as he believes, if now converted into money, be sufficient to pay a further dividend of about 30 per cent. upon such aggregate liability; that at the time of the failure of said company, and the appointment of affiant as its receiver, the board of directors of said company consisted of ten members, eight of whom held policies of insurance in such company; that three of such directors so holding policies have since sold and assigned their policies to a third party, and that four of such directors so holding policies, together with the assignee of the three directors who have transferred their policies as aforesaid, have formally accepted in writing the valuation of their policies so fixed by such actuary, and have all received from affiant such dividend of 10 per cent. thereon.

Affiant further states that a large number of persons who were stockholders of such company at the time of its failure as aforesaid, also hold policies of insurance therein, some of whom have since sold and assigned such policies to a third party, and that such shareholders so holding policies, or their assignee as aforesaid, have in like manner, with such directors, formally accepted in writing the valuation so fixed by the actuary as aforesaid upon their policies, and have in like manner, with such directors, received from this affiant a dividend of 10 per cent. thereon.

Affiant further states that almost the entire assets of said company held by him, as such receiver, consist of real estate situated in Chicago and outlying suburban towns; that most of such real estate consists of lots, improved with a cheap class of dwellings, suitable for persons of moderate means, and for which there is now, and for several months past has been, an unusual demand in the city of Chicago. Affiant further states that he has been engaged in the real estate business in the city of Chicago since the year 1867, and is familiar with the value of real estate, and with the demand for the same in said city and in such suburban towns; that the population of said city is now rapidly increasing, and the number of dwellings of a cheap class, to accommodate such increase in population, is limited, and that the demand therefor during the present winter and approaching spring, and until more of such buildings can be erected, to accommodate such increase in population, will be very great, and, in the judgment of this affiant, such buildings will sell to better advantage within the coming three or four months than for many years thereafter; and affiant fears and believes that if the sale of such real estate is delayed later than the approaching spring months there will be a serious depreciation in the prices thereof.

GEO. M. BOGUE.

Subscribed and sworn to before me this 7th day of February, 1882.

[Seal.]

JOHN L. PEARSON,
Notary Public.

IN THE

Supreme Court of the United States,

(No.)

OCTOBER TERM. A. D. 1882.

THOMAS B. NEEDLES, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS,

vs.

THE CHICAGO LIFE INSURANCE COMPANY.

Error to the Supreme Court of Illinois.

ASSOCIATION

REPLY TO POINTS OF PLAINTIFF IN ERROR IN OPPOSITION TO MOTION TO VACATE SUPERSEDEAS.

E. B. SHERMAN,

Solicitor for Defendant in Error.

J. L. HIGH,

Of Counsel.

CHICAGO:

HORACE O'DONOGHUE, LEGAL PRINTER, PARKER BUILDING, 95-97 WASHINGTON STREET.

1882.

IN THE

Supreme Court of the United States,

(No. .)

OCTOBER TERM, A. D. 1882.

THOMAS B. NEEDLES, Auditor of Public Accounts of the State of Illinois,

vs.

THE CHICAGO LIFE INSURANCE COMPANY.

Error to the Supreme Court of Illinois.

REPLY TO POINTS OF PLAINTIFF IN ERROR IN OPPOSITION TO MOTION TO VACATE SUPERSEDEAS.

I.

It is proper at this stage of the cause to ask the court to inspect the record and to vacate the supersedeas granted before the record was filed, since a mere inspection of the record will satisfy the court that plaintiff in error has no standing in court.

First—The amendment to the charter and the acceptance of such amendment by the company, which are expressly admitted by plaintiff in error, are plain and unambiguous, and therefore not susceptible of judicial construction. Hence plaintiff in error cannot in any event maintain its suit.

Second—Plaintiff in error is so clearly estopped by its own acts which are set forth in the original brief in support of our motion, that it should not be allowed to suspend the administration of an estate in which it has so long acquiesced and participated.

II.

The statement of counsel for plaintiff in error, that we have supressed the petition of the company for leave to negotiate concerning a hypothetical project of reinsurance, is unfounded, such petition being set forth as Exhibit "H," at page 26 of the brief in support of our motion. We only ask a perusal of this extraordinary proposition, which, in itself, affords the strongest proof of the complete acquiescence of the company in the appointment of the receiver.

It is true, as stated by counsel, that we did not print the answer of the company in connection with our motion. It was omitted, because filed long after the company had consented to the appointment of the receiver by the resolution of its directors recommending Goodwin or Bogue, as such receiver, and by its attorney in open court, carrying out the action of the board. But we print the same herewith and ask the court to read and consider it in connection with the petition concerning reinsurance, to which it refers and with which it was filed. It will be observed that the answer in no manner questions the constitutionality of the Insurance act, under which the Auditor filed his petition to wind up the company.

E. B. SHERMAN,
Solicitor for Defendant in Error.

J. L. HIGH, *Of Counsel.*

ANSWER OF THE INSURANCE COMPANY.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK, }

In the Circuit Court for said County—In Chancery.

T. B. NEEDLES, AUDITOR OF PUBLIC ACCOUNTS FOR THE STATE OF ILLINOIS,
v.
CHICAGO LIFE INSURANCE COMPANY.

Petition for Receiver and injunction, to wind up the affairs of said company.

The answer of the said Chicago Life Insurance Company to the petition aforesaid.

These respondents, saving all exceptions that may be had or taken to the manifold errors and insufficiencies of said petition, nevertheless for answer thereto, or to so much, or such parts thereof as is or are material to be answered unto, answering say:

I.

That they admit that said Auditor has recently caused an examination to be made of the affairs of said company by Robert M. Wood, his examiner in that behalf, in substance as is stated in said petition.

And these respondents, further answering, admit that the said John W. Clapp, who is named in said petition, was the secretary and manager of said company, and had been such secretary and manager for many years past, and that the said John W. Clapp has recently disappeared and gone to parts unknown to these respondents, leaving the business of said company in some confusion.

But whether said company, under the management of said Clapp, has for some years last past been doing a losing business, and whether there is a large deficiency of the securities of said company, and whether said company is insolvent as is in substance alleged in said petition,

these respondents do not know, except as they are informed by the report of said examiner, and therefore cannot otherwise either admit or deny the same ; but to protect all the rights and interests that may be involved, these respondents deny the truth of the charges aforesaid, and each of them, and put the said Auditor to strict proof thereof, to the end that whatever action may be had or taken upon the affairs of said company under the petition of said Auditor, may be based upon the judgment of this honorable court, upon the facts of the case duly established by lawful evidence, and not upon any confession or consent of these respondents.

II.

And these respondents, further answering, say that as soon as they learned the result of the examination aforesaid, they promptly entered upon certain efforts and proceedings to adjust the affairs of said company in such a manner as to secure the largest benefits to all parties in interest, whether creditors, debtors or stockholders of said company, and endeavored to procure from said Auditor a sufficient delay to enable said company to carry some such plan into full effect; but said Auditor, although the efforts and plans of these respondents were in general approved by said examiner, and by others whose good judgment was taken in that behalf, doubted, as he was advised, whether under the statute in such case made and provided, he could lawfully grant the indulgence which was desired by these respondents for the purposes aforesaid, and thereupon proceeded to file his said petition, and committed the matter to the charge and judgment of this honorable court.

And these respondents believe that the plan for the voluntary settlement of the affairs of said company, which was pending at the time of the filing of said petition, can still be carried out, with the approval of this honorable

court, to the great advantage of all parties in interest; and these respondents will file herein their petition to obtain the leave of the court to proceed with the negotiation of said plan, and to carry the same into full effect, when it shall have been perfected, and shall have received the approval of this honorable court.

III.

And these respondents, further answering, say that as soon as the result of the examination aforesaid was known, they at once stopped the business of insurance, in which they were engaged, and put in safe custody all the assets and securities of said company, so that there was no necessity, from anything either done or threatened by these respondents, for the appointment of a receiver, or the granting of an injunction, as prayed by said Auditor in his said petition; and these respondents insist that the order appointing said receiver and granting such injunction ought to be so modified as to allow the said company, under the direction of this honorable court, to endeavor to wind up its own affairs, in conformity with law, to save the losses and expenses of a forced conversion of its assets into money, exclusively by the hands of those hitherto wholly unacquainted with its affairs, as will be more fully shown and set forth in the petition to be filed by these respondents, as aforesaid.

And now, having fully answered, these respondents pray that such proceedings may be had in the premises as justice and the law of the land may require, etc.

CHICAGO LIFE INSURANCE COMPANY,

By C. C. BONNEY,

Their Solicitor and Counsel.

Filed July 20, 1877.

SUPREME COURT, U.S.
APR 1 1982
JAMES R. MASON

IN THE

Supreme Court of the United States.

CHICAGO LIFE INSURANCE COMPANY,

vs.

THOMAS B. NEEDLES, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS.

ERROR TO THE SUPREME COURT OF ILLINOIS.

Objections of Plaintiff in error to motion of Defendant in error to vacate the order for a Supersedeas herein; and cross-motion to strike from the files the matters filed in support of said motion.

By C. C. BONNEY,

Counsel for the Chicago Life Insurance Company.

CHICAGO:
CULVER, PAGE, HOYNE & CO., 118 AND 120 MONROE STREET.
1882.

UNITED STATES OF AMERICA, *ss.*

IN THE

SUPREME COURT.

TO THE OCTOBER TERM, A. D. 1882.

CHICAGO LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,
vs.
THOMAS B. NEEDLES, Auditor of Public Accounts of the State of Illinois, DEFENDANT IN ERROR.

Error to the Supreme Court of Illinois.

Objections to Auditor's Motion to Vacate Supersedeas, and Cross-motion by the Company.

The Chicago Life Insurance Company, by C. C. Bonney, its solicitor and counsel, appears to oppose the motion of the defendant in error to vacate the order whereby the writ of error in this cause was made a supersedeas, and respectfully submits the following points of argument and cross-motion.

First. The matters presented in support of said motion, are wholly improper to be considered thereon. Said matters respectively, involve the essential merits of the case, and cannot be considered and adjudged apart therefrom.

By said motion, the defendant in error calls upon this Court, in advance of the printing of the record; in advance of the preparation of the case for hearing as required by the rules of the Court; in advance of a knowledge of the facts of the case; and in advance of a proper argument of the errors assigned, to form and deliver a judgment upon the following questions:

(*a*) The extent and limitations of the charter contract between the Chicago Life Insurance Company and the State of Illinois.

(*b*) Whether a certain amendment of the charter, only affirms the common rule that all persons, natural or corporate, are subject to just police regulations; or whether that amendment subjected the corporation to the mere arbitrary and despotic caprice of the political agents of the State.

(*c*) The extent and effect of an acceptance of the amendment by the Company; and whether certain merely negative words in the amendment give the Legislature power to impose additional burdens on the corporation at pleasure; or whether under those words, the power of the Legislature is limited to the regulation of the mode of transacting the corporate business.

(*d*) Whether a certain statute enacted by the Legislature of Illinois, after the Company had established its business under a special charter, became in any sense, and, if so, to what extent, a part of said charter.

(*e*) Whether under the circumstances of this case, the doctrine of estoppel can and ought to be applied to bar the Chicago Life Insurance Company from appealing to this

Court for relief against an alleged invasion of its charter rights by the State of Illinois; or in other words, whether an alleged ground of estoppel exists in fact; and, if so, whether the law and public policy sanction the application thereof which the Auditor seeks to make in this case.

(*f*) Whether this Court is bound by the decision of the Illinois Supreme Court in relation to the charter contract between the State and the Company; or whether this Court will adhere to the doctrine of Wright vs. Nagle, 11 Otto, 791, that while it is true that ordinarily a construction of a State statute by its highest Court, would be binding on this Court, an exception to the rule exists when the State Court has been called upon to interpret the contracts of States, though they have been made in the forms of law, or by the instrumentality of a States' authorized functionaries, in conformity with State legislation.

(*g*) Whether an alleged voluntary compliance by the Company with certain statutory regulations of the mode of transacting the business of life insurance, can and ought to be held, if properly established by the record in this case, to subject the Company to destruction for an alleged non-compliance with other provisions imposing new burdens and obligations, and seriously invading the rights granted the Company by the charter.

(*h*) Whether the Company has waived its right to take the judgment of this Court on the constitutional questions presented by the errors assigned. In other words, whether, by certain assumed facts, not admitted to be true but strenuously denied, the Company has consented to the proceedings, and lost its right to have the same reviewed by this Court.

On all these points the defendant in error asks this Court to prejudge the merits of the case, and render a fair hearing thereof impossible. It is believed that all the grounds of the motion are embraced in the foregoing questions.

Second. The "statement of the case" submitted for the Auditor is extremely incorrect and unfair. I do not believe that the Auditor's learned solicitor had any intention to make it so, but I do think his zeal has misled him. However, his statement admirably illustrates the popular prejudice which has characterized all the proceedings in the State tribunals, and vindicates the propriety of removing such cases to this judicial height, where wrongs done even to a corporation, and by a great and powerful State, may find a greater power to undo them and grant redress.

That "statement" gives a marked prominence to matters which, as the Company claim, the record shows to be incompetent and irrelevant. It makes assertions which the Company contends are not warranted by the pleadings and the proofs, and wholly suppresses the vital matters upon which the decision of the case depends. For example, it suppresses the fact that the Company denies any breach of contract; any violation of duty; any cause of forfeiture; and any intention to abandon its affairs and consent to a distribution of its assets by the Receiver.

It suppresses the fact that the Company made what it claimed to be the equivalent of a complete and immediate restoration of the alleged deficiency of its assets; and the fact that the evidence shows that the directors supposed the receivership would be only a temporary expedient, and that they

would soon be able to resume control of the affairs of the Company, and would have the concurrence of the Receiver to that end; and the fact that the person suggested by the Directors for Receiver was a member of the Company, and of course friendly to its interests; and the fact that the absconding of the Secretary was the cause of the confusion in the midst of which the Receiver was appointed; and that that fact, and grossly exaggerated newspaper reports of the misconduct of the Secretary, deterred the Directors from resisting at the outset the proceedings of the Auditor, as it may be presumed they would otherwise have done. For they had the pecuniary ability and the personal standing as citizens that would have enabled them to make the contest, though against the panic-prejudice of that time it would doubtless have been unavailing.

It also suppresses the fact that the petition of the Company for leave to reinsure its risks was accompanied by an answer denying the truth of the Auditor's charges, and putting him to strict proof thereof, and denying any necessity for an injunction and Receiver; also the fact, that the evidence more fully explains that matter, and shows that the intention of the Company was to suspend the transaction of new business till it could adjust its affairs, and that it did not intend to abandon its assets and charter.

It also suppresses the fact, that the record shows that the proceedings of the Receiver, to which it refers, were taken without any notice to the Company, or any consent of the Company thereto.

Said "statement" is not verified by any reference to the record of the case.

These defects arise, I am quite sure, from an unconscious substitution of the advocate's views of the case for the facts on which it rests. The opprobrious epithets which disfigure the "statement" are best answered by the simple fact that the record of the case shows conclusively, that all the officers and directors of the Company, with the single exception of the Secretary, were men of high repute and ample means, and that they acted in perfect good faith and with what they then believed, and now insist, was reasonable diligence and, most certainly, without any participation in or knowledge of the misconduct of the Secretary.

Third. In connection with the record of the cause, the documents submitted in support of the motion afford the strongest grounds for its denial. Among other things, they show that the Receiver has been wrongfully dealing with the assets of the Company; and the auditor now urges for the dissolution of the supersedeas, the violations of law of which the Receiver has been guilty. For the Supreme Court of Illinois hold that it was not the design of the Legislature that the corporation should be dispossessed of its estate and effects without an opportunity of first being heard upon the merits, and that the act does not contemplate the appointment of a Receiver until there has been such a hearing. (Ward v. Farwell, 97 Ills. 615.)

The hearing of the present case upon the merits was concluded and the final decree entered July 2, 1881. The case was at once removed to the Supreme Court of Illinois, and its decision was entered November 10, 1881. The writ of error, supersedeas and citation from this court bear date November 23, 1881.

Fourth. The ground upon which the supersedeas rests seems to be entirely misapprehended. The allowance of the writ of error establishes, for all present purposes, the fact that the record contains questions, which it is the right and the duty of this Court to hear and decide. Whenever such questions exist in a cause, and the State Court has made such a decision as was given in this case, the Constitution presumes that such decision is, or at least may be, wrong; and upon that presumption, the first principles of justice require that the proceedings be stayed till the matter can be re-examined by this Court. In this case, the supersedeas has been allowed and served, and security given, in exact accordance with the rules of this Court. Indeed, the Auditor does not pretend the contrary. But he asks this Court to set aside a supersedeas, regularly and properly granted, because, in his opinion, the merits of the case should be determined in his favor. Surprise is a mild term to express the feeling inspired by such an application, seriously made and zealously urged. What does the Auditor ask? He asks that he may have the permission of this Court to go on and irrevocably dispose of all the assets of the Company before the Court has determined whether he has any right to do so. For that alleged right, is the gist of the controversy.

Fifth. The Receiver's affidavit is inadmissible. It cannot enlarge or change the record, or the rules of the Court, and upon them the supersedeas rests. Whether real estate in Chicago is likely to rise or fall, is a matter for which the Insurance Company is not responsible; and it does not constitute any reason why the Receiver should be allowed to make sales and conveyances while his right to do so is in dispute. But in addition to this, the Company has made an arrange-

ment to join in sales in proper cases, on a stipulation that the proceeds shall be held in trust to await the result of the litigation, and that the rights of neither party shall be prejudiced. The alleged fact that some of the Directors have accepted a dividend from the Receiver, is irrelevant and immaterial, because in so doing they would act as any other individual creditor, and such acts could not affect their official conduct as Directors, nor prejudice the right of the corporate body.

Sixth. The Auditor seeks to aid his motion by exhibiting therewith the opinion of the State Supreme Court. But the Insurance Company respectfully denies the correctness of the statements, as well as the law of that opinion. For example, the opinion declares that "The evidence is vague as to any offer of re-insurance. It is found in the testimony of the Examiner," and a summary of the Examiner's testimony is there given. There is no reference to any other evidence on that point. But the printed abstract of the evidence in the State Supreme Court, now ready to be produced in this Court, shows that two of the Directors—Godfrey Snydacker and Charles L. Currier—prove the offer to re-insure the risks of the Company to prevent the application for a Receiver, by the most direct and conclusive testimony.

The Chicago Life Insurance Company therefore respectfully moves the Court to strike from the files the matters presented by the defendant in error in support of his motion, as improper to be considered in that behalf, and thereupon to overrule said motion as made without any just cause, etc.

To show how largely the Auditor's motion involves the merits of the case, a copy of the errors assigned in this Court is hereto appended.

If such matters could be heard on such a motion, the Insurance Company would move to postpone the hearing of the motion till the record shall have been printed, and to enlarge the time allowed for argument to the limits of a hearing upon the merits.

If the Court should nevertheless direct the hearing of the matters aforesaid upon said motion, the Company will ask to be further heard in opposition thereto, etc.

To exclude any idea that the Insurance Company seeks any delay in this case, it voluntarily stipulated in its application for a supersedeas, to join in any application that might be made to advance the hearing of the cause; and it now consents to a hearing upon the merits, on any day that may be assigned by the Court, allowing time for the printing of the record and the preparation of briefs.

C. C. BONNEY,

Solicitor and Counsel for the Chicago Life Insurance Co.

ASSIGNMENT OF ERRORS.

And now comes the said Chicago Life Insurance Company, plaintiff in error, by C. C. Bonney, its solicitor and counsel, and says that in the proceedings and final decree of the Circuit Court of Cook County, in the State of Illinois, in this cause, and in the affirmance of said proceedings and decree by the Supreme Court of the State of Illinois, which is the highest court of said State in which a decision could be had, there was drawn in question the validity of certain statutes of the State of Illinois, upon the ground that said statutes are repugnant to the Constitution of the United States, and

the decision of said courts, and each of them, was in favor of the validity of said statutes; and there was also drawn in question therein an authority exercised against this Company by said State of Illinois and by the Auditor of Public Accounts thereof, upon the ground that said authority was repugnant to the Constitution of the United States, and the decision of said courts, and each of them, was in favor of the validity of said authority, as manifestly appears from the foregoing transcript of said proceedings and decree.

And the said Chicago Life Insurance Company also says, that in the proceedings and decree aforesaid there is manifest error in this, to wit:

First. It manifestly appears from said proceedings and decree, that the Chicago Life Insurance Company hath well and truly kept and performed the contract of its charter with said State of Illinois, and hath not done or suffered any act or thing for which its franchises might be lawfully suspended or forfeited or taken away; and the said Circuit Court of Cook County manifestly erred in decreeing that said Company had forfeited the right to transact business and exercise its franchises under its charter; and the said Supreme Court of Illinois manifestly erred in affirming that decree.

Second. The said Circuit Court of Cook County also erred in decreeing that said Company had forfeited the right to hold, use and enjoy the property acquired under its charter; and the said Supreme Court of Illinois also erred in affirming that decree.

Third. The said Circuit Court of Cook County also erred in decreeing that the supposed cause of action alleged in the

petition of said Auditor against said Company constitutes any good ground for enjoining the business and seizing and administering the assets of said Company; and the said Supreme Court of Illinois also erred in affirming that decree.

Fourth. Even if the supposed cause of action alleged in said petition had ever existed in fact, which is denied by said Company, nevertheless the said Circuit Court of Cook County erred in refusing to decree that such cause was wholly removed by said Company before the filing of said petition; and the said Supreme Court of Illinois also erred in affirming that refusal.

Fifth. The said Circuit Court of Cook County also erred in refusing to hold and decree that the offer of said Company to re-insure all its risks, as set forth in said proceedings, wholly removed the said supposed cause of action alleged in said Auditor's petition, and that thereby, if not before, said Company was fully entitled to proceed with its said business and to exercise all its franchises under the charter contract between it and said State of Illinois; and the said Supreme Court of Illinois also erred in affirming said refusal of said Circuit Court.

Sixth. The said Circuit Court also erred in decreeing that a mere supposed deficiency of assets, arising from the secret and concealed misconduct of the Secretary of said Company, without the knowledge or participation of the other officers and directors thereof, and without any concurrence of the Company itself therein, constituted a good ground for enjoining the business and distributing the assets of said Company; and the said Supreme Court of Illinois also erred in affirming that decree.

Seventh. The said Circuit Court of Cook County also erred in holding and decreeing that the State of Illinois had power under the charter-contract between said State and said Company to impose upon said Company new and more stringent conditions of the exercise of its corporate franchises, and new and more stringent grounds for the forfeiture of its corporate rights and property; and said Supreme Court of Illinois also erred in affirming that decree.

Eighth. The said Circuit Court of Cook County also erred in holding and decreeing, in substance, that said Company was subject to the so-called 4 per cent basis required by Section 10 of the act of the Legislature of said State, relating to life insurance, approved by the Governor of said State, on or about March 26, A. D. 1869, as a condition of transacting business, under its charter, in said State, and in enjoining said Company from transacting any business for a supposed non-compliance with said requirement; and the said Supreme Court of Illinois also erred in upholding and affirming that decree.

Ninth. The said Circuit Court of Cook County also erred in holding and decreeing, in substance, that for a non-compliance with said provision of said Section 10 of said act, it could adjudge against the Company, any other penalty than that therein specifically prescribed, and in holding and decreeing that for such a non-compliance, if established in fact, the business of the Company could be lawfully arrested and enjoined, and its property be taken away and administered; and the said Supreme Court of Illinois also erred in upholding and affirming that decree.

Tenth. The said Circuit Court of Cook County also erred in refusing to hold and decree that, under its charter from said

State, said Company is not subject to any new conditions of corporate existence, or of the transaction of the business for which it was incorporated, but only to such regulations of the mode of transacting that business, as might be made without impairing the corporate rights and interests vested in the Company by its charter; and the said Supreme Court of Illinois also erred in affirming that refusal.

Eleventh. The said Circuit Court of Cook County also erred in refusing to hold and decree that the authority exercised against said Company, by said State of Illinois, and by said Auditor, was repugnant to the Constitution of the United States, in that it violated the obligations of the charter-contract between said State and said Company, and also violated the obligation of the contracts between said Company and the holders of its policies of life insurance, contrary to the provisions of Section 10 of Article I of the Constitution of the United States; and said Supreme Court of Illinois also erred in sustaining and affirming that refusal.

Twelfth. The said Circuit Court of Cook County also erred in holding and decreeing that the mere opinion of said Auditor, a political officer of said State, respecting the condition of said Company, did or could constitute any good ground for bringing suit to enjoin the business and administer the assets of said Company, contrary to the provisions of Amendment 4 of the Constitution of the United States; and the said Supreme Court of Illinois also erred in affirming that decree.

Thirteenth. The said Circuit Court of Cook County also erred in refusing to hold and decree that the provisions of the act of the Legislature of said State, under which said Auditor brought his said suit, and which act was approved by the

Governor of said State, on or about February 17, A. D. 1874, in so far as said provisions set forth and define the causes for which such suit may be brought, were and are void for want of certainty and materiality; and said Supreme Court of Illinois also erred in sustaining and affirming that refusal.

Fourteenth. The said Circuit Court of Cook County also erred in holding and decreeing in substance that the supposed deficiency of the assets of said Company, alleged in said petition, even if the same existed in fact, which is denied, did or could make said Company insolvent; or did or could warrant the proceedings had and taken against said Company at the suit of said Auditor; and the said Supreme Court of Illinois also erred in upholding and affirming that decree.

Fifteenth. The said Circuit Court of Cook County also erred in sustaining and enforcing said proceedings, and in rendering said final decree against said Company, for that said proceedings and decree, and said statutes of the State of Illinois are also in many other respects, plainly repugnant to the provisions of Section 10 of Article I; and to those of Amendment 4; and to those of Article I of Amendment 14 of the Constitution of the United States, as will be more fully shown in the brief to be filed in support of these assignments of error; and the said Supreme Court of Illinois also erred in upholding said proceedings and in affirming said decree.

And the said Chicago Life Insurance Company annexes hereto a copy of the statutes constituting its charter aforesaid, and makes the same a part hereof. And said Company also annexes hereto a copy of so much of the aforesaid acts of said State, as immediately relate to the errors above assigned.

Wherefore, the said Chicago Life Insurance Company prays that the said Supreme Court of the United States will proceed to consider the proceedings and decree aforesaid, and the matters aforesaid above assigned for error, and that the said proceedings and decree of the said Circuit Court of Cook County, and the affirmance thereof by the said Supreme Court of Illinois may thereupon respectively be annulled, reversed, and altogether made as nothing, and that this Company may be restored to all things which it hath lost by reason of said proceedings and decree, etc.

C. C. BONNEY,

Solicitor and Counsel for the Chicago Life Insurance Co.

[Williams v. Bruffy, 12 Otto, 255.]

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1883.

THE CHICAGO LIFE INSURANCE COMPANY,
Plaintiff in Error,
vs.
THOMAS B. NEEDLES, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS,
Defendant in Error.

Error to the Supreme Court of Illinois.

POINTS IN SUPPORT OF MOTION TO DISMISS.

E. B. SHERMAN,
JAMES L. HIGH,
Solicitors and of Counsel for Defendant in Error.

Beach, Barnard & Co., Legal Printers, 104 Randolph St., Chicago.

SUPREME COURT OF THE UNITED STATES.

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Plaintiff in Error,
vs.
THOMAS B. NEEDLES, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS,
Defendant in Error.

Error to the Supreme Court of Illinois.

Defendant in error moves the court to vacate the *supersedeas* heretofore granted in this cause, and to dismiss the writ of error, because the record does not disclose any federal question, upon which the jurisdiction of this court may be invoked to review the judgment of the Supreme court of Illinois.

The facts necessary to an understanding of the motion are as follows: The writ of error was sued out to reverse a judgment of the Supreme court of Illinois, affirming a judgment of the Circuit court of Cook county, Illinois, granting a final injunction to restrain plaintiff in error from the further prosecution of its business, and confirming the appointment of a receiver over plain-

tiff in error, in a proceeding instituted by the defendant in error as Auditor of Public Accounts of the State of Illinois. The action was brought by the auditor under an act of the general assembly of the State of Illinois, entitled "An Act in regard to the dissolution of Insurance Companies," approved February 17, 1874, and in force July 1, 1874, (Revised Statutes of Illinois, Cothran's edition of 1880, page 848; Revised Statutes of Illinois, edition of 1881, page 646.) The sections of this act material to this motion, are as follows:

SECTION 1. "*Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That if the auditor of state, upon examination of any insurance company incorporated in this state, is of the opinion that it is insolvent, or that its condition is such as to render its further continuance in business hazardous to the insured therein, or to the public, or that it has failed to comply with the rules, restrictions or conditions provided by law, or has exceeded, or is exceeding its corporate powers, he shall apply by petition to a judge of any Circuit court of this state to issue an injunction, restraining such company, in whole or in part, from further proceeding with its business, until a full hearing can be had, or otherwise, as he may direct. It shall be discretionary with such judge, either to issue said injunction forthwith, or to grant an order for such company, upon such notice as he may prescribe, to show cause why said injunction should not issue, or to cause a hearing to be had on complaint and answer, or otherwise, as in ordinary proceedings in equity, before determining whether an injunction shall be issued. He may in all such cases make such orders and decrees, from time to time, as the exigencies and equities of the case may require, and in any case, after a full hearing of all parties interested, may dissolve, modify or perpetuate such injunction, and make all such orders and decrees as may be needful to suspend, restrain or prohibit the further continuance of the business of the company."

SEC. 5. "When the charter of any such insurance company ex-

pires, is forfeited, or annulled, or the corporation is restrained from further prosecution of its business, or is dissolved, as hereinbefore provided, the court, on application of the auditor, or of a member, stockholder or creditor, may, at any time before the expiration of said two years, appoint one or more persons to be receivers, to take charge of the estate and effects of the company, including such securities as may be deposited with the auditor or treasurer of state, and to collect the debts due, and property belonging to it, with power to prosecute and defend suits in the name of the corporation, or in their own names, to appoint agents under them, and do all other acts necessary for the collection, marshaling and distributing of the assets of the company, and the closing of its concerns; and when necessary for the final settlement of its unfinished business, the powers of such receivers may be continued as long as the court deems necessary therefor."

SEC. 9. "The mode of summoning parties into court, the rules of practice, course of procedure, and powers of courts, in cases arising under this act, shall be the same as in ordinary proceedings in equity in this state, except as herein otherwise provided."

The Chicago Life Insurance Company was originally incorporated by an act of the general assembly of Illinois, February 16, 1865, under the name of the Traveller's Insurance Company, with power to transact the business of an accident insurance company. By an amendment of the charter approved February 21, 1867, the corporate name was changed to the Chicago Life Insurance Company, and it was authorized to do a general life insurance business, and other and additional powers were conferred upon it for that purpose. Section 5 of this amendment provides as follows: "This "act and the act to which this is an amendment shall not "be deemed to exempt said company from the operation "of such general laws as may be hereafter enacted by "the general assembly on the subject of life insurance."

On the 29th of March, 1867, this amendment to the charter was formally adopted by the company by a vote of its directors, and thereupon the company began the transaction of the business of life insurance under the name of the Chicago Life Insurance Company, which business it continued until the appointment of the receiver as hereinafter stated. In conformity with the act of 1874, above quoted, the auditor filed his petition against the company in the Circuit court of Cook county, on the 7th day of July, 1877. The petition was as follows:

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

IN THE CIRCUIT COURT OF COOK COUNTY. IN CHANCERY.
TO THE JULY TERM, 1877.

To the Honorable, the Judges of the Circuit court of Cook county, in Chancery sitting:

Your petitioner, T. B. Needles, auditor of public accounts for the State of Illinois, respectfully represents as such auditor, and in his official capacity

That he has lately, as auditor, as aforesaid, caused an examination to be made in pursuance of an act of the general assembly of said State, entitled "An act in regard to the dissolution of Insurance "Companies," approved February 17, 1874, and in force July 1, 1874, of the "Chicago Life Insurance Company," of Chicago, a corporation organized and existing under and by virtue of, and subject to, the laws of said State of Illinois, and having its principal place of business in the city of Chicago; and that the result of the said examination and the general condition and amount of the assets and liabilities of said company appear in a schedule hereto annexed, and marked "Exhibit A," and which your petitioner prays may be taken and considered as a part hereof.

And your petitioner shows, that from such examination he is of the opinion that the condition of said company is such as to render its further continuance in business hazardous to the insured therein, and that your petitioner has so certified to the attorney general, as appears from the exhibit hereto annexed, and marked "Exhibit B."

Therefore, your petitioner prays that the said company may be summoned to answer your petitioner respecting the matter herein set forth; and that they may be enjoined and restrained from further proceeding with their said business; and that a receiver may be appointed to take charge of the real estate and effects of said company in pursuance of the act aforesaid, and with the powers therein prescribed and usually vested in a receiver. And that in the meantime, and until the cause may be heard, the said company may be temporarily enjoined, as above prayed, and that a receiver be named and empowered. And that your petitioner may have such other and further relief as may be meet. And the petitioner prays that the usual writs of summons and injunction may be issued, as aforesaid.

And your petitioner will ever pray, etc.

J. K. EDSALL, *Attorney General.*
THOMAS B. NEEDLES,
Auditor of Public Accounts of the State of Illinois.

By E. B. SHERMAN,
Solicitor of Complainant and of Counsel.

On the same day with the filing of this petition, July 7, 1877, upon notice to the insurance company, the Circuit court of Cook county appointed a receiver over the company, with the usual powers of receivers in equity, and the receiver immediately entered upon the discharge of his duties, and has ever since continued to act in that capacity.

On the 20th of July, 1877, the company filed its answer to the auditor's petition, which is as follows:

"The answer of the said Chicago Life Insurance Company to the petition aforesaid:

These respondents, saving all exceptions that may be had or taken to the manifold errors and insufficiencies of said petition, nevertheless, for answer thereto, or to so much, or such parts thereof as is or are material to be answered unto, answering say:

1. That they admit that said auditor has recently caused an examination to be made of the affairs of said company by Robert M. Wood, his examiner in that behalf, in substance as is stated in said petition.

And these respondents further answering, admit that the said John W. Clapp, who is named in said petition, was the secretary and manager of said company, and had been such secretary and manager for many years past, and that the said John W. Clapp has recently disappeared and gone to parts unknown to these respondents, leaving the business of said company in some confusion. But whether said company, under the management of said Clapp, has for some years last past been doing a losing business, and whether there is a large deficiency of the securities of said company, and whether said company is insolvent, as is in substance alleged in said petition, these respondents do not know, except as they are informed by the report of said examiner, and therefore cannot otherwise either admit or deny the same; but to protect all the rights and interests that may be involved, these respondents deny the truth of the charges aforesaid, and each of them, and put the said auditor to strict proof thereof, to the end that whatever action may be had or taken upon the affairs of said company under the petition of said auditor, may be based upon the judgment of this honorable court, upon the facts of the case duly established by lawful evidence, and not upon any confession or consent of these respondents.

2. And these respondents further answering, say that as soon as they learned the result of the examination aforesaid, they promptly entered upon certain efforts and proceedings to adjust the affairs of said company in such a manner as to secure the largest benefits to all parties in interest, whether creditors, debtors or stockholders of said company, and endeavored to procure from said auditor a sufficient delay to

enable said company to carry some such plan into full effect; but said auditor, although the efforts and plans of these respondents were in general approved by said examiner and by others whose good judgment was taken in that behalf, doubted, as he was advised, whether under the statute in such case made and provided, he could lawfully grant the indulgence which was desired by these repondents for the purposes aforesaid, and thereupon proceeded to file his said petition, and committed the matter to the charge and judgment of this honorable court. And these respondents believe that the plan for the voluntary settlement of the affairs of said company which was pending at the time of the filing of said petition, can still be carried out, with the approval of this honorable court, to the great advantage of all parties in interest; and these respondents will file herein their petition to obtain the leave of the court to proceed with the negotiation of said plan, and to carry the same into full effect, when it shall have been perfected, and shall have received the approval of this honorable court.

3. And these respondents, further answering, say that as soon as the result of the examination aforesaid was known, they at once stopped the business of insurance, in which they were engaged, and put in safe custody all the assets and securities of said company, so that there was no necessity, from anything either done or threatened by these respondents for the appointment of a receiver, or the granting an injunction as prayed by said auditor in his said petition, and these respondents insist that the order appointing said receiver and granting such injunction, ought to be so modified as to allow the said company, under the direction of this honorable court to endeavor to wind up its own affairs, in conformity with law, to save the losses and expenses of a forced conversion of its assets into money exclusively by the hands of those hitherto wholly unacquainted with its affairs, as will be more fully shown and set forth in the petition to be filed by these respondents, as aforesaid.

And now, having fully answered, these respondents pray that such proceedings may be had in the premises as justice and the law of the land may require, etc.

CHICAGO LIFE INSURANCE COMPANY,
By C. C. BONNEY,
Their Solicitor and Counsel."

To this answer a general replication was filed.

At the April Term, 1881, of the Circuit court of Cook county, the cause came on for final hearing upon the application of the auditor for a perpetual injunction against the company, and after the hearing upon the merits, and the production of the evidence in behalf of both parties, and after the arguments of counsel, there was filed, on the 21st day of April, 1881, in behalf of the company, a motion which was as follows:

"Motion of defendant for decree at the hearing upon the merits at the April Term, A. D., 1881.

This cause having been heard upon its merits upon the petition of said auditor and the answer of said company thereto, and the evidence produced before the court by the respective parties, and having been argued by counsel, the said Chicago Life Insurance Company moves the court here to find, order, adjudge and decree that the said auditor hath not made or established any such case against said company as doth or ought to entitle him to the relief which is sought in and by his said petition; but that the equities of the cause are with the said defendant, upon the pleadings and proofs aforesaid.

And the said defendant also moves the court to further order and adjudge that this cause be retained for such further proceedings in furtherance of justice as may be found expedient, with leave to the said defendant to apply to the court for such orders and decrees in relation to the injunction heretofore granted, and the receiver heretofore appointed herein, or otherwise, as said company may be advised, etc."

In connection with and in support of this motion, counsel for the company filed twenty-four points entitled "points in support of the foregoing motion." Of these points the only ones which seem intended to suggest a federal question are the 19th, 20th, 22d and 23d, which are as follows:

"19. As construed to warrant the proceedings against said corporation, which are sought in and by said petition, and which have been had and taken under the same by the court, in this case, said act in regard to the dissolution of insurance companies and said statute of life insurance are and each of them is also null and void, as contrary to the constitution of the United States in this, to wit:

(*a.*) Said acts impair the obligation of the contract between this state and said Chicago Life Insurance Company and the contracts between said company and its policy holders, and the contracts between said company and its creditors, in violation of section ten (10) of article one (1) of said constitution.

(*b.*) Said acts also authorize an unreasonable seizure of the assets of said corporation, in violation of amendment four (4) of said constitution.

20. Under the pretense of providing a better remedy for offenses committed by insurance companies, said act in regard to the dissolution of insurance companies, and the general statute in relation to life insurance, above cited, seek to invest in the auditor of public accounts as a political officer, and to be exercised at his mere pleasure and discretion, a power of search, seizure and destruction, in violation both of the constitution of this state and of that of the United States.

22. In so far as said life insurance act, and said act for the dissolution of insurance companies, seek to impose new or more stringent grounds for the forfeiture of the corporate franchises of corporations existing under special charter, said acts are unconstitutional, null and void, as impairing the obligation of the contract between the state and such companies.

23. In so far as the acts above cited seek to impose new and more burdensome conditions for the transaction of insurance business by companies not created under said statutes, but existing under special charters granted by the legislature, said acts are unconstitutional, null and void, as impairing the obligation of the contract between the state and such companies."

The Circuit court held the cause under advisement until July 2, 1881, when the following decree was entered:

"And now, on this 2d day of July, 1881, being one of the days of the June term of the said court, this cause came on to be heard upon the motion of the solicitor of said auditor for a perpetual injunction against the said defendant; and the court having considered the petition of the said auditor, and the exhibits therewith filed and made a part thereof, and the answer of the said defendant thereto, all of which were filed on the 7th day of July, 1877, the order entered thereupon restraining the said defendant from the further prosecution of its business until the further order of the court, and appointing George M. Bogue, receiver of the said company, which was entered on the said 7th day of July, 1881; and having considered the evidence introduced in behalf of the said complainant, and also on behalf of the said defendant; and having heard argument of counsel for the respective parties, and after a full hearing of the parties interested, that is to say the said auditor, the complainant, and the said Chicago Life Insurance Company, the defendant, and having considered the motion of the said defendant for a decree in its favor filed in said cause at the conclusion of the said hearing, wherein the said defendant specified the grounds upon which its said motion was based; and being fully advised in the premises, the court doth overrule and deny the said motion of said defendant for a decree in its favor, and doth find that the only question now before the court upon this hearing is whether the said defendant shall be perpetually enjoined from the further prosecution of its business; and the court doth further order, adjudge and decree that the said defendant be and hereby is perpetually enjoined, restrained and prohibited from the further prosecution of its business; and the court doth further order and adjudge that the costs of this proceeding be paid by the defendant out of any property of the defendant available for that purpose.

And thereupon the said defendant in open court objects and excepts to each and every of the findings and decretal provisions aforesaid, and prays that its exceptions thereto may be preserved of record, and

also prays that the evidence introduced on said hearing may be duly certified and preserved of record, which is accordingly done, etc.

And now the said defendant having been perpetually enjoined from the further prosecution of its business, it is, thereupon, on motion of the solicitor of the said auditor, now made in open court, further ordered, adjudged and decreed that the order of the court heretofore made in said cause, appointing the said George M. Bogue receiver of the said defendant, be and the same is hereby ratified and confirmed, to which also said defendant excepts.

And said defendant also excepts to the form of this decree, for that it doth not set forth any sufficient grounds for said perpetual injunction, nor for continuing or appointing said receiver."

This decree was affirmed by the Supreme court of the State of Illinois, and to reverse the judgment of that court affirming the decree, the company sued out its writ of error, upon which Mr. Justice HARLAN granted a *supersedeas*.

Points in Support of Motion.

Repeated decisions of this court under the twenty-fifth section of the Judiciary Act of 1789, as well as under the present act of congress (R. S., § 709), have established the rule that, to warrant a writ of error to the Supreme court of a state, it must clearly appear upon the face of the record that one of the federal questions mentioned in the act of congress did arise in the State court. It is not enough that the question may have been suggested or raised in an incidental manner, but it must distinctly and specifically appear upon the face of the record itself.

Michigan Central R. R. Co. v. *Michigan Southern R. R. Co.*, 19 How., 378.
McKinney v. *Carroll*, 12 Peters, 66.
Farney v. *Towle*, 1 Black, 350.
Worthy v. *The Commissioners*, 9 Wal., 611.
New Orleans R. R. v. *Morgan*, 10 Wal., 256.
Messenger v. *Mason*, 10 Wal., 507.
Hurley v. *Street*, 14 Wal., 85.
Smith v. *Adsit*, 16 Wal., 185.
Boughton v. *Exchange Bank*, 104 U. S., 427.
Dregger v. *Bocock*, 104 U. S., 596.
Brown v. *Colorado*, 106 U. S., 95.

Nor will this court, without the consent of the parties, resort to the opinion of the Supreme court of the state to determine whether a federal question was involved.

Kennebec R. R. v. *Portland R. R.*, 14 Wal., 23.

Gibson v. *Choutcau*, 8 Wal., 314.

Mich. Cent. R. R. Co. v. *Mich. South. R. R. Co.*, 19 How., 378.

Medberry v. *State of Ohio*, 24 How., 413.

Even if it were competent for this court, without the consent of the parties, to resort to the opinion of the Supreme court of the state to determine whether it has jurisdiction to revise the judgment of that court, the opinion of that court in this case would disclose no grounds for the exercise of jurisdiction, since no federal question is there discussed or decided.

Chicago Life Insurance Company v. *Auditor, etc.*, 101 Ill., 82.

The pretense that a federal question is involved in the case is purely an afterthought on the part of counsel for plaintiff in error. The answer of the company to the auditor's petition, in which the court would naturally expect such a question to be urged in defense, if at all, is wholly silent upon this point. It is not until after the case is at issue upon the petition of the auditor, the answer of the company, and the replication to the answer, and after the final hearing upon the merits, and the introduction of the evidence by both parties in support of the issues tendered by their pleadings, and after the

arguments of counsel have been concluded, that it is sought to import into the case a pretended federal question as a foundation for the exercise of the revisory powers of this court. An anomalous document is then filed by the company, called a motion for a decree in its favor. Even this motion is silent as to the existence of any federal question, and such question is suggested for the first time in the "points in support of the foregoing motion." These points are, at the most, a mere argument or abstract of the reasons urged by counsel for the company why the relief sought by the auditor should be denied. Except, therefore, as a federal question is disclosed in these points or heads of argument, reduced to writing and filed by counsel for the company, the record is wholly silent as to the existence of any such controversy in the State court as to warrant a writ of error from this court.

Even if the "points" in which the question is thus attempted to be presented are to be construed as part of the motion for a decree in favor of the company, they still constitute no part of the record, and cannot be considered by this court as establishing any ground for the exercise of its jurisdiction. It will be observed by the court that section 9 of the insurance act of 1874 above set forth, and under which the action was begun by the auditor, provides that the "practice and course of pro-"cedure and power of courts in cases arising under this "act shall be the same as in ordinary proceedings in "equity in this state, except as herein otherwise provided." The procedure, therefore, under the act in question, is made to conform to the established procedure in equity,

which, with some slight statutory modifications, is, in Illinois, identical with the English chancery practice. We are aware of nothing in the practice of courts of equity which affords any precedent for the novel and extraordinary motion for a decree in favor of the defendant, as an appendage to which it is attempted to introduce a federal question into the controversy. The extraordinary nature of the proceeding thus resorted to by counsel to import into the record an issue which he had failed to make by his pleadings in the record proper, sufficiently attests that such pretended issue is wholly an afterthought, resorted to for the purpose of giving some colorable ground for invoking the jurisdiction of this court. And this point is further emphasized by the fact that the case, as appears from the record, had stood upon the issues presented by the petition and answer for nearly four years, during which time the receiver had proceeded with the uninterrupted administration of the estate, collecting and converting its assets and paying dividends to its creditors, without objection or remonstrance on the part of the company, and with no suggestion in its behalf that such proceedings were in derogation of any constitutional rights.

But, not only does the answer fail to raise any federal question whatever, but, singularly enough, it, by its terms, invokes the jurisdiction of the court below, which jurisdiction it now seeks to establish is in violation of its constitutional rights. And not only does the answer clearly indicate the intention of the defendant to submit itself to the jurisdiction of the court, but this intention is further evinced by a petition referred to in the answer and filed

in the case on the same day, in which petition the company prays the court to permit it to re-insure its risks and to sanction a scheme therein set forth for the re-insurance of such risks, in which petition it is stated: "That "it is important that the company be allowed to act con- "currently with the receiver under the direction of the "court in closing up the affairs of the company, and that "it have the assistance of the secretary *pro tem* and its "counsel, in order that the business of the company and "winding up of its concerns may not be wholly left to "the management of persons hitherto unacquainted with "its affairs." Clearly, this is an absolute confession of record of the jurisdiction of the court, and of the validity and constitutionality of the statute under which the proceeding was instituted and was then being carried on.

For these reasons, we submit that the supersedeas should be vacated and the writ of error dismissed.

Respectfully submitted,

E. B. Sherman,
James L. High,
Solicitors and of Counsel for Defendant in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1883.

THE CHICAGO LIFE INSURANCE COMPANY,
vs.
THOMAS B. NEEDLES, AUDITOR OF PUBLIC ACCOUNTS FOR THE STATE OF ILLINOIS.

Error to the Supreme Court of Illinois.

Objections and Answer to Motion of Defendant to Dismiss, of which notice has been given for March 3d, 1884.

C. C. BONNEY,
Counsel for Plaintiff in Error.

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Error to Illinois Supreme Court.

THE OBJECTIONS OF THE CHICAGO LIFE INSURANCE COMPANY, BY C. C. BONNEY, ITS COUNSEL, TO THE MOTION OF THE DEFENDANT IN ERROR TO DISMISS FOR WANT OF A FEDERAL QUESTION, OF WHICH NOTICE HAS BEEN GIVEN FOR MARCH 3, 1884.

MAY IT PLEASE THE COURT:

Admitting due notice that this motion will be made, I respectfully insist that it is not entitled to a hearing, and that if it were proper to be made, it must certainly be denied.

1. The writ of error in this case was allowed by one of the justices of this court, and that allowance is required for the very purpose of determining the existence of a question which this court has juris-

diction to review. When the writ is allowed, that question is determined for all purposes anterior to the hearing upon the merits of the case.

2. The motion has, in effect, heretofore been made and overruled.

The writ of error was allowed by MR. JUSTICE HARLAN, Nov. 23, 1881, and there was a strict compliance with all the requirements of law and the rules of this court.

In the ordinary course of business the record will be printed in the next vacation, and the cause be reached for hearing at the next term.

April 3, 1882, the defendant in error moved in this court to vacate the supersedeas granted upon the allowance of the writ of error. Upon the submission of that motion the existence of a federal question was incidentally questioned, and the Chief Justice then stated the rule as above given. The motion was not entertained. April 10, 1881, a motion to advance the cause was made, in which I joined, pursuant to my voluntary stipulation to do so. That motion was denied. The question now raised has, therefore, in effect, already been decided by this court. But if the fact were otherwise, I should suggest that a point, which it has taken nearly three years to discover, is either so obscure, or so novel, that it may well wait a little longer till the record is printed, and the hearing upon the merits is reached.

3. The matters printed with the present motion do not properly set forth the questions which this court is asked to review, nor the grounds on which they rest. Those questions were in fact strenuously urged, and elaborately argued in the State Circuit Court, and in the Illinois Supreme Court, and are preserved in the record at every stage of the proceedings.

The circuit judge sets them forth in his certificate of the evidence, which is as much a part of the record as the pleadings, (Bridge Co. v. Railroad Co. 2 Otto, 315.) reciting that "*the defendant by its coun-*"*sel, for the purpose of introducing into the record,* "*and preserving therein the legal grounds upon which* "*it rests its defense, and particularly the provisions of* "*the constitution of the United States, upon which it* "*relies in this case, made and submitted the following* "*motion and reasons for a decree in its favor, to-wit:*" Then follow the same at large, setting out with precision the provisions of the national constitution which are violated by the legislation and the acts of the Auditor under it, of which the Insurance Company complains. And the record further recites, that "*thereupon the court took said cause under advise-*"*ment,* [April 21st, 1881,] *and having fully considered* "*same* (seventy-two days afterwards,) to-wit, on or about the 2nd day of July, 1881, rendered a decree therein in favor of said Auditor and against said Company," &c.

[Case printed for Illinois Supreme Court, pp. 106, 47 to 55; Nos. 19, 20, 22.]

The assignments of error in the Illinois Supreme Court allege that *the acts of the Auditor and the provisions of the statute under which he assumed to act are in violation of the constitution of the United States.*

[Ibid. 111. Errors, 10, 11.]

And the points made in support of the errors assigned, specify the particular provisions of the constitution of the United States which the Insurance Company invoked for its protection.

[Ibid. pp. 3 to 12. Nos. 15, 19, 22, 22, 23, 29.]

In verification of the foregoing points, I stand ready to produce for inspection by this court, if there-

to required, the printed case to which I have referred.

The assignments of error in this court were printed in full in my opposition to the former motion to vacate the supersedeas. They present the same Federal Questions on which the Illinois Circuit and Supreme courts were compelled to pass in order to enter and uphold a decree perpetually depriving the Chicago Life Insurance Company of all its property and all its powers to do business. The constitutional provisions violated are, Art. I, sec. 10; Amendment IV. Yet my learned friends call the Federal Questions "wholly an afterthought!" The fourteenth amendment is also clearly invoked by the questions raised.

They seem to overlook the fact that it is the final hearing of a cause, and not merely incidental proceedings preliminary thereto, that determines the questions involved in it. They also omit the fact that the Chicago Life Insurance Company expressly saved all its rights, and denied all the auditor's allegations, putting him to strict proof; and seem to forget that when the insurance company was begging that the grip of seizure and confiscation might be a little relaxed, and finally released, its supplication was denied. Such a supplication, in a merely incidental petition, is hardly germane to the question whether the seizure and confiscation of the corporate rights and property were in violation of the constitution of the United States.

4. If authority were needed, the case of the *Northwestern University* v. *The People*, 9 Otto, 309, is in point, and conclusive.

So also are the following:

Murray v. *Charleston*, 6 Otto, 432.

Railroad Co. v. *Maryland*, 21 Wall. 457.
The Binghampton Bridge, 3 Wall. 51.
Bridge v. *Hoboken Co.*, 1 Wall. 116.

The cases in which this court has held the same doctrine are too numerous for citation here; and the doctrine is too well established to require such citation.

5. In a word, the case is this: The State Auditor of Illinois, under the authority of a statute of that State, and with the active aid of its courts, seized the office and property of the Chicago Life Insurance Company, arrested and destroyed its business, and perpetually enjoined it from the exercise of its rights and franchises with the avowed purpose of keeping and disposing of all its assets. The company insisted before the Illinois Circuit and Supreme Courts that all the proceedings against it were in violation of the constitution of the United States. But those courts upheld the proceedings, and thereupon the company brought them to this court for review and reversal. It should not be necessary to say that whether the National Constitution has been violated by State officers, under State legislation and prosecutions, is a Federal Question.

In conclusion I respectfully submit, that if citizens of the United States, transacting business and acquiring property under corporate, instead of partnership forms, have any rights which the political authorities of the several States are bound to respect, then the case of the Chicago Life Insurance is entitled to a hearing in this court upon its merits.

Respectfully submitted by

CHARLES C. BONNEY,
Counsel for Plaintiff in Error.

12

113-514

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1884.

NO. 181.

THE CHICAGO LIFE INSURANCE COMPANY,
Plaintiff in error,
vs.
THOMAS B. NEEDLES, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS,
Defendant in Error.

In Error to the Supreme Court of Illinois.

BRIEF FOR PLAINTIFF IN ERROR,

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CONTENTS.

I.

STATEMENT OF THE CASE.

PAGE.

1. The Charter and other Statutes..... 6
2. Condition and management of the Company when suit brought..... 9
3. The Auditor's Examination and Report..... 10
4. What the Company did thereupon..... 12
5. The Auditor's suit, the Company's defense, and the proceedings in the Illinois courts. 13
6. The questions involved, and how raised.... 18

II.

THE ERRORS ASSIGNED. 25

III.

BRIEF OF THE ARGUMENT.

1. Introductory considerations..... 33
2. The nature of the business involved..... 35
3. The Company was not insolvent..... 36
4. The offer of re-insurance a perfect defense.. 37

PAGE.

5. The specific remedy and penalty prescribed in the statute for the supposed offense... 38
6. The Charter was not subject to alteration, amendment or appeal..... 40
7. The Police Power no warrant for the Auditor's proceedings..... 46
8. No forfeiture by accident, inadvertence or mistake..... 45
9. The specific violations of the National Constitution..... 50
10 The justice of the Company's defense..... 53

IV.

TABLE OF AUTHORITIES CITED. 58

Supreme Court of the United States.

October Term, A. D. 1884.

NO 184

THE CHICAGO LIFE INSURANCE COMPANY,

vs.

THE AUDITOR OF THE STATE OF ILLINOIS

BRIEF FOR PLAINTIFF IN ERROR.

I.

STATEMENT OF THE CASE.

This is a case under the Illinois act for the dissolution of insurance companies. The Auditor of Public Accounts of the State of Illinois, under the authority of a statute of that State, and with the active aid of its courts, seized the office and property of the Chicago Life Insurance Company, arrested and destroyed its business, and caused it to be perpetually enjoined from the exercise of its rights and franchises, with the avowed purpose of keeping and disposing of all its assets. The com-

party insisted before the Illinois Circuit and Supreme Courts that all the proceedings against it were arbitrary, unjust and oppressive, and in violation of the Constitution of the United States. But those courts upheld the proceedings, and thereupon the company brought them to this court for review and reversal. Whether the National Constitution has been violated by State officers, under State legislation and prosecutions, is the Federal question presented in this case.

The material facts of the case as contained in the record, arranged in chronological order, are, in substance, as follows:

1. THE CHARTER, AND THE STATUTES UNDER WHICH THE SUIT WAS BROUGHT.

February 16, 1865, the plaintiff in error was incorporated by the legislature of Illinois, under the name of the "Travelers Insurance Company." Record, 100. (All references to the record are to the printed record.)

Its specific business was accident insurance, but it also had power to make such other kinds of insurance as the directors might deem expedient. Charter, Sec. 1, 4; Record, 100.

February 21, 1867, the charter was amended. The name was changed to "Chicago Life Insurance Company," and express power to insure lives was declared. Provision was made for a contingent capital by receiving conditional notes for insurance; for insurance on any terms and conditions that might be specified in the by-laws or contracts, and for the exercise of all the powers of the board of directors, by an executive committee of three. Rec. 102.

The legislature also declared that "This act, and the act to which this is an amendment, shall not be deemed to *exempt* said company from the operation of such general laws as may be hereafter enacted by the General Assembly on the subject of life insurance. Amendment, Sec. 5; Record, 103.

No power to alter, amend or repeal is expressed in the charter, the amendment, any other statute relating to the matter, or the State Constitution. The applicability and effect of this non-exemption declaration, if any, will be considered in the argument.

The company transacted a life insurance business under the amended charter until July 7, 1877, when its business was arrested and suspended as below stated.

July 1, 1869, an act of the Illinois legislature "to organize and regulate the business of life insurance," went into force. It will be found on page 21 of the Illinois Insurance Laws, filed in this case. It applies in part to future and in part to existing companies. Sec. 6 requires a specified annual report from all life insurance companies. Sec. 10 provides that when the assets of a life company shall not be of a net value specified, and commonly known as the four per cent. basis, the auditor shall give notice, and *the company shall cease to issue policies until the deficiency is made up, under a penalty of one thousand dollars.* Record, 104. Sec. 13 authorizes inquiries and examinations by the auditor, or under his direction. Sec. 24 provides a penalty of five hundred dollars against any agent who shall make insurance in violation of any law of the State.

The Chicago Life Insurance Company made reports to the auditor, purporting to comply with the act.

July 1, 1882, an act of the Illinois legislature went into effect, providing a way in which any life insurance company may retire from business, on publishing a notice of its desire to do so, and refunding the net value of the policies, or re-insuring the risks in another company, with the consent of the policy-holders. Insurance Laws, p. 27.

July 1, 1874, a like act went into effect, entitled "An act in regard to the dissolution of Insurance Companies." Insurance Laws, p. 35, Record 104. This statute provides that if the auditor, upon examination, is of the *opinion* that it is insolvent, or, that *its condition is such as to render its further continuance in business hazardous to the insured therein*, or to the public; or that it has failed to comply with the rules, restrictions or conditions provided by law; or has exceeded, or is exceeding its corporate powers, he shall apply for an injunction restraining the company in whole or in part from proceeding with its business. The act also provides for a receiver to convert the assets, pay the debts, and distribute the balance among the stockholders or others entitled. The proceedings, practice and powers of the court are to be as in other cases in equity.

Section 2 of this act provides that a majority, in number or interest of the stockholders of any Illinois insurance company may, on petition to the circuit court, voluntarily close the concerns of the company, and retire from business.

Such are the Illinois statutes under which this case arose.

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2. THE CONDITION AND MANAGEMENT OF THE COMPANY WHEN THE PROCEEDING TO DESTROY IT WAS BROUGHT.

In June, 1877, the auditor caused an examination of the affairs of the Chicago Life Insurance Company to be made by R. M. Woods, the chief clerk in the Insurance Department. Rec. 12, 6. Up to that time the company was in good standing. R. 17. The active manager was J. W. Clapp, the secretary. He had the active charge of the whole business, and had the implicit confidence of the company. R. 47. The president was W. F. Tucker, who was also president of the Union Stock Yard National Bank. R. 39, 40. The board of directors included Samuel M. Nickerson, president of the First National Bank, Godfrey Snydecker, the head of a private banking house, and Charles L. Currier, secretary of the American Insurance Company, who all testified at large on the hearing of the cause, in relation to the corporate condition and management, and the auditor's proceedings. R. 42, 49, 57.

The securities of the company were examined from time to time by the proper finance and examining committee of the board of directors, and found to be correct in every particular. Testimony of Tucker, Snydacker and Nickerson. Rec. 40, 42, 49.

The directors made as thorough examinations of the affairs of the company as were practicable. Rec. 41, 42, 44, 45, 46, 48, 49, 50, 53, 54, 57.

They found nothing to excite suspicion of irregularity, and had none. The head book-keeper testifies that he had no suspicion of any wrong-doing, before the auditor's last examination. Rec. 52.

The auditor had caused similar examinations to be made in the previous years, by an expert account-

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The auditor had caused similar examinations to be made in the previous years, by an expert account-

ant who also assisted in making the last examination, but no irregularity was discovered. Rec., 17, 25. The directors relied in part on those examinations, as an official assurance of the soundness of the company. Rec., 44–5.

The examiner's testimony shows the impracticability of any more thorough examination by the directors than they in fact made; and that he found nothing impeaching their good faith. Rec., 16, 17, 18, 25, 27.

While the examination was in progress, and after it had progressed a week or ten days, the secretary disappeared, and no trace of him was discovered till after the examination was completed and a report of it made. R., 5. Between the date of his departure and the time when the examiner completed his work, articles were published in the Chicago newspapers, charging that the secretary had taken away over $100,000; that he had lost $111,000 in speculations; that if the policy-holders find fifteen per cent. of their resources, they will be very fortunate, and the like. R., 75–7. The origin of these statements is not disclosed, except by the natural presumptions of fact which arise upon the record, and, in contemplation of law, constitute a part of it. The publications were obviously not in the interest of the company, nor chargeable to its directors.

3. THE EXAMINER'S REPORT TO THE AUDITOR.

July 6, 1877, the examiner made his report to the auditor. It showed a present actual indebtedness of $11,518, with net assets amounting to $196,685. It then assumed to mature the outstanding contingent liabilities on policies, and stated the same at

$333,276. Thereupon it charged an impairment of the company's assets on a four per cent. basis of $148,171.58; and on the American six per cent. or commercial basis, of $75,205.58. Of this sum, $71,000 is shown to consist of securities of which the company held the legal title, but which, the examiner claimed, had not been paid for by it. It will be contended in the argument that as between the company and its creditors, it was the owner of those securities, even if they were mere accommodation paper. The examiner recommended an application for a receiver, on the ground that the company was insolvent within the meaning of the statute. Rec. 5.

The correctness of the examiner's statement of the value of the assets, is strenuously denied by the company. The valuation is not the official act of the auditor in person, nor is it the result of the examiner's personal inspection and judgment. Neither is it the result of the judgment of the auditor or his examiner on legal evidence. On the contrary, it rests on mere hearsay. Rec. 21. The examiner testifies that the valuations of assets at and about Chicago, were made by the person who was almost immediately afterward appointed receiver of the company; and that the valuation of the outside assets was made, as he believes, by writing letters to bankers and real estate men in the neighborhood and obtaining their replies.

There was no evidence that the securities were not of full value when taken. R. 21.

The examiner testifies, that treating all the securities which stood in the name of the company as its property, and striking out the alleged deficiency of securities, there would have been a small surplus of assets on the six per cent. or commercial basis, at the time of his examination. Rec. 21.

The company claims that to the assets reported by the examiner, $209,615, without reduction, should be added at least $100,000, as the cost of establishing the business, and the actual selling value of the good will and patronage thereby created, as shown by the evidence. Rec., 60, 65. One witness puts the selling value of the business and good will at $150,000. Rec., 65. This would make the assets $309,615, with only $11,581 of actual matured indebtedness.

The valuation of the outstanding policies, for the purpose of converting the contingent and conditional liabilities of the company into a fixed present debt of $333,276, was the mere arbitrary act of the examiner. The company will contend in argument that it is not bound by that valuation. A subsequent valuation was made at the instance of the receiver, but its validity is denied by the company, on the ground that it was made without notice and an opportunity to be heard. Rec., 39, 73.

4. WHAT THE COMPANY DID TO AVERT ITS DESTRUCTION.

While the examiner's report was being prepared, and before any action had been taken upon it, the principal officers and directors of the company, other than the secretary, took active steps to avert the impending calamity. They stopped doing business, facilitated the auditor's examination, and concurred with him in the safe-keeping of the assets. R., 19. *The company then proposed to the auditor to re-insure, in some good company, all their outstanding policies for the longest time he would grant, and during that time try to raise the funds that might be required. They asked for ninety days, insisted on sixty days, and finally*

begged for thirty days. But their applications were refused. The auditor insisted on winding up the company. Rec. 43, 58, 59, 19, 20.

But the directors then believed that if a receiver should be appointed, they would have his friendly concurrence in carrying out the scheme to re-insure the policies, when they could reinstate the company or voluntarily wind it up, as they might find best. Rec. 59, 67, 68. In what respects that belief influenced their action, will appear below.

5. THE SUIT TO DESTROY THE BUSINESS OF THE COMPANY, AND DISTRIBUTE ITS ASSETS.

July 7, 1877, the next day after the date of the examiner's report to the auditor, the original petition in this case was filed in equity, in the Circuit Court of Cook County, Illinois. It sets forth the *opinion* of the auditor, based on the examination of his clerk, "*that the condition of said company is such as to render its further continuance in business hazardous to the insured therein*"; and prays an injunction and receiver, and for other relief.

On the same day, the application for an injunction and a receiver was made and allowed. The company having been duly served with notice, appeared by its solicitor, *not waiving any of its rights, but insisting upon the same.*

July 20, 1877, the company, still believing as the record plainly shows, that it could obtain from the court, with the concurrence of the receiver, the permission to re-insure its risks and "otherwise extinguish or provide for the remaining liabilities," filed its answer to the auditor's petition, accompanied by a petition for leave of the court to act accordingly. The petition was heard and wholly

denied. That denial dispelled the illusion under which the directors had theretofore rested, and the real conflict between the Illinois authorities and the Chicago Life Insurance Company then began. Rec. 8, 77.

The answer saves all exceptions, admits the fact of the examination of its affairs, and that the secretary had recently disappeared, leaving the business of the company in some confusion.

It denies the alleged deficiency and insolvency, and puts the auditor to strict proof thereof. And respondents say that as soon as they learned the result of the examination they promptly entered upon certain efforts and proceedings to adjust the affairs of said company in such a manner as to secure the largest benefits to all parties in interest, whether creditors, debtors or stockholders of said company, and endeavored to procure from said auditor a sufficient delay to enable said company to carry some such plan into full effect. And respondents believe that the plan for the voluntary settlement of the affairs of said company, which was pending at the time of the filing of said petition, can still be carried out, with the approval of the court, to the great advantage of all parties in interest. And as soon as the result of the examination aforesaid was known, they at once stopped the business of insurance in which they were engaged, and put in safe custody all the assets and securities of said company, so that there was no necessity, from anything either done or threatened by these respondents, for the appointment of a receiver, or the granting an injunction, as prayed by said auditor in his said petition; and the respondents insist that the order appointing said receiver and granting such

injunction, ought to be so modified as to allow the company, under the direction of this honorable court, to endeavor to wind up its own affairs, in conformity with law. An issue was formed by filing a general replication. Rec. 8, 10.

The case was heard on the pleadings and proofs, at the April Term, 1881. R., 11.

Upon that hearing the auditor called and examined in his behalf, Robert M. Woods, the examiner, R. 11; Duncan Campbell, the receiver's book-keeper, R. 27; and George M. Bogue, the receiver, R. 36. The company called and examined Wm. F. Tucker, its president, R. 39; Godfrey Snydacker, a director and member of the Finance Committee, R. 42; Samuel M. Nickerson, a director, who examined and checked off the securities, R. 48; Wm. V. Baker, the head book-keeper; H. Z. Culver, a stockholder, R. 52; Charles L. Currier, a director, and secretary of another insurance company, R. 56; and S. M. Parish, for seven years an agent of the company in Wisconsin, R. 64.

Most of the principal facts disclosed have already been stated. The following are added:

Mr. Currier and Mr. Parish testified, as expert insurance men, that a re-insurance would have restored the standing of the company. R., 64, 65, 66, 67.

The accommodation securities held by the company, and reported among its assets, were stated in the examiner's testimony to belong to the secretary, Clapp, and J. K. Barry, his partner, to the amount of $64,000; to W. F. Tucker, the president, $15,000, and to George B. Clapp, $10,000. Rec., 14, 15. It seems from the examiner's report that $8,000 of the $64,000 had since been paid for by the company. R., 5.

The secretary was reported in arrears in the sum of $5,042.87. R., 5. The securities were kept in a box, and were accompanied by abstracts of title and certificates of valuation, and were brought out when required for examination. R., 46, 52. *The examiner, in his testimony, expressly says that he did not claim that the directors had been guilty of any gross neglect or default, but that the failure to discover what he found out was "what we might call a natural mistake, a natural oversight."* R., 26.

It will be contended in the argument, that the testimony of Duncan Campbell proves nothing, but nullifies itself. R. 27. The collection of the interest on what were termed the guarantee securities, by the parties who furnished them, for their own use, is shown to have been according to the practice and usage of the auditor's office. R. 18, 46. Believing, as above shown, that the appointment of a receiver would be temporary, and be followed by an arrangement to re-insure the risks, and regain control of the company, the directors expressed their choice of a person to take that position. R. 74. "*But there was no intention to abandon the company.* R. 59. It was decidedly understood, believed and hoped that the ultimate result would be a re-insurance or other adjustment of the affairs of the company." Ibid.

Upon the final hearing of the cause, the company, for the purpose of introducing into the record, and preserving therein the legal grounds upon which it rests its defense, and particularly the provisions of the Constitution of the United States upon which it relies in this case, made and submitted a motion and reasons for a decree in its favor, which are contained at large in the record, and are set forth in a

subsequent part of this brief. Certificate of evidence and exceptions. Rec. 68, 69, 81.

April 21, 1881, at the conclusion of the final hearing, the Circuit Court took the cause under advisement, and held it till June 24th, when a decision was announced in favor of the auditor. The final decree and the certificate of evidence and exceptions were prepared and settled, and the decree entered and the certificate filed July 2, 1881. Rec. 69, 85.

The final decree recites the consideration by the court of "the motion of the defendant for a decree in its favor, wherein it specified the grounds upon which its said motion was based," and the overruling and denial of the motion; and perpetually enjoins, restrains and prohibits the Chicago Life Insurance Company from the further prosecution of its business. The decree also ratifies and confirms the appointment of the receiver, and adjudges costs against the company.

The objections and exceptions of the company are fully preserved. Rec., 86.

The case was taken to the Supreme Court of Illinois, at the September term, 1881, and was there heard upon its merits. The opinion of that court was delivered, and its judgment entered Nov. 10, 1881, affirming the decree of the court below. Rec., 91, 95. The opinion endeavors to justify the destruction of the company's business, and the confiscation of its assets, under the police power. R. 93. In purporting to recite the evidence of the proposal to re-insure, the clear and full testimony of Snydacker and Currier showing an application to the auditor in person, Rec. 59, is wholly overlooked, and only the vague and uncertain recollection of the examiner given. Rec. 94. How completely the opinion

is in conflict with the prevailing authorities, will be shown in the argument.

November 23, 1881, a writ of error from this court was allowed by MR. JUSTICE HARLAN, and made a supersedeas. The writ was duly served, and the record returned to this court. The accompanying citation was also duly served and returned. Rec. 105–110.

6. THE QUESTIONS INVOLVED.

"The questions involved, and the manner in which they are raised," can best be shown by presenting here the exact points which were submitted under the broad denials of the answer, to the Circuit Court, upon the final hearing, and overruled by it as set forth in the certificate of evidence and exceptions, and in the final decree. Rec. 68, 69, 86. The same questions are expressly renewed by the assignments of error in the Illinois Supreme Court. Rec. 87, Nos. 8, 10, 11.

These points show that the Chicago Life Insurance Company contended, before the Illinois courts, that it had not in fact violated its charter contract with the State, but had faithfully kept the same; and that it had not in fact violated its contracts with its policy holders or creditors, but was ready and able to meet all its matured liabilities; and that it resisted the auditor's proceedings upon the ground that the authority exercised by him, and the statutes under which he acted, were contrary to the Constitution of the United States. Points 19, 22, 23, set forth the Federal questions with fullness and certainty, and the record also shows that all the points were overruled by the Circuit Court, after having been held under advisement for more than

two months; and were renewed in the Illinois Supreme Court, and also overruled by it. Record, 86, 87, tenth and eleventh assignments of error.

THE QUESTIONS RAISED IN THE ILLINOIS COURTS ARE, WHETHER—

1. The evidence clearly shows that the company was not in such a condition as to render its further continuance in business hazardous to the insured therein, at the time of the filing of the auditor's petition.

2. The evidence clearly shows that the company was in fact solvent, on the American or commercial basis, as stated by the auditor's examiner.

3. The evidence clearly shows that the company had assets at the time of filing the petition, exceeding in amount the reserve required by law, even on a four per cent. basis.

4. The evidence clearly shows that said company, at the time aforesaid, had the ability to proceed with its business and accomplish the objects for which it was incorporated, and that its directors were urgent so to proceed.

5. The evidence clearly shows that the alleged impairment of assets, and the alleged mismanagement of the affairs of the company, is apparent rather than real; and that the tables of figures elaborately and skillfully made up to show such deficiency and mismanagement, do not rest on sound principles of business, or of finance, or of law.

6. The evidence clearly shows that at the time of filing said petition, the company did not actually owe more than eight thousand four hundred dollars ($8,400). It also shows that the alleged impairment of assets, if it in fact existed, which is denied, arose only after several years of decline in values and business, following the financial panic of 1873; and that if the company had been left in charge of its own

affairs, as the law authorized and required, it would now be in a prosperous condition.

NOTE: Adding the alleged amount of unpaid salaries and rent, would increase the liabilities to $11,581.

7. Neither the stockholders of said company, nor the Board of Directors thereof, have at any time been guilty of any willful neglect; default or violation of law in or about said business; and said company is not nor ever has been, guilty of any act, matter or thing for which the affairs of said company ought to be wound up, or the franchises thereof forfeited, or the body thereof dissolved.

8. All the alleged losses and deficiencies of the assets of said company, which are charged and claimed in the report of the auditor's examiner, which is referred to in said petition and made part thereof, if in fact any such losses and deficiences have occurred in the assets of said company, were caused solely by the secret fraud and mismanagement of the secretary of the company, without the knowledge or concurrence of the Board of Directors thereof, or of the stockholders of the same.

9. The previous non-discovery of the alleged fraud and misconduct of said secretary is as well chargeable to the neglect and default of said auditor in failing to make more careful examinations of the affairs of said company, as to any neglect and default of the stockholders and directors thereof. And said fraud and misconduct were of such a character that the same could not have been discovered and prevented by the exercise of the ordinary care and diligence required of directors of such corporations, but could be detected only by a long-continued examination of the affairs of said company by professional experts.

10. As soon as said alleged impairment and deficiency of the assets of said company had been discovered, the directors of said company proposed to said auditor, by and through his said examiner, who was then in the principal office of said company, and

had assumed the charge thereof, that they would effect, without any delay, a re-insurance of all the outstanding policies of said company, in any good and solvent insurance company that said auditor or examiner might designate; which proposal on the part of the directors was nevertheless refused by and for said auditor. And in and by said offer to effect such re-insurance, the said Chicago Life Insurance Company did, in contemplation of law, then and there make up and restore all and any deficiency of the assets of said company then alleged to exist, and thereupon, if not before, said company became and was fully entitled to resume and prosecute its said business, without any interference or hindrance on part of said auditor on account of said alleged deficiency of assets, or otherwise.

11. Even if, through the secret misconduct of said secretary, there existed a deficiency of the assets of said company, said company had the right to a reasonable and convenient time and opportunity to make up such deficiency; and it did in fact make good such deficiency by the offer of re-insurance aforesaid; and said petition was so filed by said auditor, and said receiver appointed, and said injunction awarded, without any complaint on the part of any creditor of said company, or of any other person interested therein, that said company had failed to meet and discharge any debt or obligation against it, or had been guilty of any violation of any contract into which it had ever entered. Wherefore, all the proceedings of said auditor, and of the court, upon his said petition, were and are manifestly contrary to law and equity, and to the rights of said Chicago Life Insurance Company, under its special charter aforesaid.

12. The pretended examination of the affairs of said company, to which said petition refers, and which is made part thereof, constitutes no ground for proceeding against said company as is attempted in and by said petition.

Said petition does not show that said company is

in fact insolvent. There is no averment of any unpaid debt. There is no averment of any violated contract.

Said petition does not show that the condition of said company is in fact such as to render its further continuance in business hazardous to the insured.

13. Said petition doth not show that the assets of said company were, at the time of the filing of said petition, in any danger of loss or misapplication by reason of anything then being done or threatened by said company.

14. The statute specified in said petition doth not authorize any proceeding against any company engaged in the business of life insurance; but is intended to apply exclusively to corporations engaged in the business of fire insurance.

15. The said Chicago Life Insurance Company is a corporation created and existing under a special charter granted by the Legislature of the State of Illinois, and consisting of two public laws, approved February 16, A. D. 1865, and February 21, A. D. 1867, respectively; and said petition doth not show any willful and persistent violation of any duty imposed on, or right granted to said company, by said legislature in said special charter.

16. Said petition is founded upon an allegation of said auditor, that the condition of said company is such as to render its further continuance in business hazardous to the insured therein, as specified in the act for the dissolution of insurance companies, approved February 17, A. D. 1874; and the examination to which said petition refers, manifestly sets forth as a cause of proceeding against the company the supposed fact that its funds had fallen below the net value of its policies on a 4 per cent. basis, as specified in Section 10 of the statute of life insurance of this State, approved March 26, A. D. 1869; but the special charter of said Chicago Life Insurance Company in effect forbids any proceeding

against said company, for any such cause as is set forth in said petition.

17. In so far as said act for the dissolution of insurance companies purports to authorize any proceeding for any supposed hazard to the insured, or to the public, said act is void for uncertainty.

18. As construed to warrant the proceedings against said company, which are sought in and by said petition, and which have been had and taken under the same by the court in this case, said act in regard to the dissolution of insurance companies and said statute of life insurance are and each of them is unconstitutional, null and void, in this, to wit:

(*a*) They impair the obligation of the contract between the State and said insurance company; and the obligation of the contracts between said company and its policy holders and creditors, in violation of section fourteen (14), of article two (2), of the Constitution of this State.

(*b*) As so constructed, they authorize an unreasonable seizure of the assets of a corporate person in violation of section six (6) of the same article.

(*c*) As so construed, they are special acts regulating the practice in courts of justice, and providing a different method of procedure for a single class of corporate persons from that required in all other cases, and are thus in violation of section twenty-two (22), of article four (4) of said Constitution.

19. As construed to warrant the proceedings against said corporation, which are sought in and by said petition, and which have been had and taken under the same by the court, in this case, said act in regard to the dissolution of insurance companies and said statute of life insurance are and each of them is also null and void, as contrary to the Constitution of the United States, in this, to wit:

(*a*) Said acts impair the obligations of the contract between this State and said Chicago Life In-

surance Company; and the contracts between said company and its policy-holders; and the contracts between said company and its creditors, in violation of section ten (10) of article one (1) of said constitution.

(b) Said acts also authorize an unreasonable seizure of the assets of said corporation, in violation of amendment four (4) of said constitution.

20. Under the pretense of providing a better remedy for offenses committed by insurance companies, said act in regard to the dissolution of such companies, and the general statute in relation to life insurance, above cited, seek to invest in the auditor of public accounts, as a political officer, and to be exercised at his mere pleasure and discretion, a power of search, seizure and destruction, in violation both of the Constitution of this State and of that of the United States.

21. Even if the statutes of life insurance and for the dissolution of insurance companies, above cited, could be held to apply to corporations existing under special charter, nevertheless said auditor's petition against said Chicago Life Insurance Company is wholly unauthorized by said acts, for that said life insurance act has provided, in section ten (10) thereof, a special and particular restriction and penalty for the precise case supposed and set forth in the report of the examination upon which said petition is founded.

22. In so far as said life insurance act, and said act for the dissolution of insurance companies, seek to impose new or more stringent grounds for the forfeiture of the corporate franchises of corporations existing under special charter, said acts are unconstitutional, null and void, as impairing the obligation of the contract between the State and such companies.

23. In so far as the acts above cited seek to impose new and more burdensome conditions for the transaction of insurance business by companies not

created under said statutes, but existing under special charters granted by the legislature, said acts are unconstitutional, null and void, as impairing the obligation of the contract between the State and such companies.

24. Under the circumstances set forth in the auditor's petition and detailed in the report of his examiner to which the same refers, and shown by the evidence, it was clearly the duty of the auditor to abstain from filing any such petition, or taking any other action against said company, until after the directors thereof had been allowed a reasonable time and opportunity to repair the alleged losses suffered through the secret misconduct of their secretary, and to resume and prosecute their business of insurance. Rec., 81, 88.

II.

THE ERRORS ASSIGNED.

The following is the assignment of errors upon the record as returned to this court, here set out as required by the rule relating to briefs.

And now comes the said Chicago Life Insurance Company, plaintiff in error, by C. C. Bonney, its solicitor and counsel, and says that in the proceedings and final decree of the Circuit Court of Cook County, in the State of Illinois, in this cause, and in the affirmance of said proceedings and decree by the Supreme Court of the State of Illinois, which is the highest court of said State in which a decision could be had, there was drawn in question the validity of certain statutes of the State of Illinois, upon the ground that said statutes are repugnant to the Constitution of the United States, and the decision of said courts, and each of them, was in favor of the validity of said statutes; and there was also drawn in question therein an authority exercised against this company by said State of Illinois, and by the auditor of public accounts thereof, upon the ground

that said authority was repugnant to the Constitution of the United States; and the decision of said courts, and each of them, was in favor of the validity of said authority, as manifestly appears from the foregoing transcript of said proceedings and decree.

And the said Chicago Life Insurance Company also says, that in the proceedings and decree aforesaid, there is manifest error in this, to wit:

First. It manifestly appears from said proceedings and decree, that the Chicago Life Insurance Company hath well and truly kept and performed the contract of its charter with said State of Illinois, and hath not done or suffered any act or thing for which its franchises might be lawfully suspended or forfeited or taken away; and the said Circuit Court of Cook County manifestly erred in decreeing that said company had forfeited the right to transact business and exercise its franchises under its charter; and the said Supreme Court of Illinois manifestly erred in affirming that decree.

Second. The said Circuit Court of Cook County also erred in decreeing that said company had forfeited the right to hold, use and enjoy the property acquired under its charter; and the said Supreme Court of Illinois also erred in affirming that decree.

Third. The said Circuit Court of Cook County also erred in decreeing that the supposed cause of action alleged in the petition of said auditor against said company, constitutes any good ground for enjoining the business and seizing and administering the assets of said company; and the said Supreme Court of Illinois also erred in affirming that decree.

Fourth. Even if the supposed cause of action

alleged in said petition had ever existed in fact, which is denied by said company, nevertheless the said Circuit Court of Cook County erred in refusing to decree that such cause was wholly removed by said company before the filing of said petition; and the said Supreme Court of Illinois also erred in affirming that refusal.

Fifth. The said Circuit Court of Cook County also erred in refusing to hold and decree that the offer of said company to re-insure all its risks, as set forth in said proceedings, wholly removed the said supposed cause of action alleged in said auditor's petition, and that thereby, if not before, said company was fully entitled to proceed with its said business, and to exercise all its franchises under the charter contract between it and said State of Illinois; and the said Supreme Court of Illinois also erred in affirming said refusal of said Circuit Court.

Sixth. The said Circuit Court also erred in decreeing that a mere supposed deficiency of assets, arising from the secret and concealed misconduct of the secretary of said company, without the knowledge or participation of the other officers and directors thereof, and without any concurrence of the company itself therein, constituted a good ground for enjoining the business and distributing the assets of said company; and the said Supreme Court of Illinois also erred in affirming that decree.

Seventh. The said Circuit Court of Cook County also erred in holding and decreeing that the State of Illinois had power under the charter contract between said State and said company, to impose upon said company new and more stringent conditions of the exercise of its corporate franchises, and new

and more stringent grounds for the forfeiture of its corporate rights and property; and said Supreme Court of Illinois also erred in affirming that decree.

Eighth. The said Circuit Court of Cook County also erred in holding and decreeing in substance, that said company was subject to the so-called 4 per cent. basis required by section 10 of the act of the legislature of said State, relating to life insurance, approved by the governor of said State, on or about March 26, A. D. 1869, as a condition of transacting business under its charter in said State; and in enjoining said company from transacting any business, for a supposed non-compliance with said requirement; and the said Supreme Court of Illinois also erred in upholding and affirming that decree.

Ninth. The said Circuit Court of Cook County also erred in holding and decreeing, in substance, that for a non-compliance with said provision of said section 10 of said act, it could adjudge against the company, any other penalty than that therein specifically prescribed; and in holding and decreeing that for such a non-compliance, if established in fact, the business of the company could be lawfully arrested and enjoined, and its property be taken away and administered; and the said Supreme Court of Illinois also erred in upholding and affirming that decree.

Tenth. The said Circuit Court of Cook County also erred, in refusing to hold and decree that, under its charter from said State, said company is not subject to any new conditions of corporate existence, or of the transaction of the business for which it was incorporated, but only to such regulations of the mode of transacting that business, as might be

made without impairing the corporate rights and interests vested in the company by its charter; and the said Supreme Court of Illinois also erred in affirming that refusal.

Eleventh. The said Circuit Court of Cook County also erred, in refusing to hold and decree that the authority exercised against said company, by said State of Illinois, and by said auditor, was repugnant to the Constitution of the United States, in that it violated the obligations of the charter contract between said State and said company; and also violated the obligation of the contracts between said company and the holders of its policies of life insurance, contrary to the provisions of Section 10 of Article I of the Constitution of the United States; and said Supreme Court of Illinois also erred in sustaining and affirming that refusal.

Twelfth. The said Circuit Court of Cook County also erred, in holding and decreeing that the mere opinion of said auditor, a political officer of said State, respecting the condition of said company, did or could constitute any good ground for bringing suit to enjoin the business and administer the assets of said company, contrary to the provisions of amendment 4 of the Constitution of the United States; and the said Supreme Court of Illinois also erred in affirming that decree.

Thirteenth. The said Circuit Court of Cook County also erred in refusing to hold and decree that the provisions of the act of the legislature of said State, under which said auditor brought his said suit, and which act was approved by the governor of the State on or about February 17, A. D. 1874, in so far as said provisions set forth and de-

fine the causes for which such suit may be brought, were and are void for want of certainty and materiality; and said Supreme Court of Illinois also erred in sustaining and affirming that refusal.

Fourteenth. The said Circuit Court of Cook county also erred in holding and decreeing in substance that the supposed deficiency of the assets of said company, alleged in said petition, even if the same existed in fact, which is denied, did or could make said company insolvent; or did or could warrant the proceedings had and taken against said company at the suit of said auditor; and the said Supreme Court of Illinois also erred in upholding and affirming that decree.

Fifteenth. The said Circuit Court of Cook county also erred in sustaining and enforcing said proceedings, and in rendering said final decree against said company, for that said proceedings and decree, and said statutes of the State of Illinois are also in many other respects plainly repugnant to the provisions of Section 10 of Article I; and to those of Amendment 4; and to those of Article I of Amendment 14 of the Constitution of the United States; as will be more fully shown in the brief to be filed in support of these assignments of error; and the said Supreme Court of Illinois also erred in upholding said proceedings and in affirming said decree.

And the said Chicago Life Insurance Company annexes hereto a copy of the statutes constituting its charter aforesaid, and makes the same a part hereof. And said company also annexes hereto a copy of so much of the aforesaid acts of said State as immediately relate to the errors above assigned.

Wherefore, the said Chicago Life Insurance Company prays that the said Supreme Court of the

United States will proceed to consider the proceedings and decree aforesaid, and the matters aforesaid above assigned for error, and that the said proceedings and decree of the said Circuit Court of Cook county, and the affirmance thereof by the said Supreme Court of Illinois may thereupon respectively be annulled, reversed, and altogether made as nothing, and that this company may be restored to all things which it hath lost by reason of said proceedings and decree, etc.

INTERLOCUTORY PROCEEDINGS IN THIS COURT.

April 3, 1882, the defendant in error moved this court to vacate the supersedeas granted on the allowance of the writ of error, and supported his motion by a printed document of thirty-two pages, containing among other things the charter, the general insurance law, and the opinion of the Illinois Supreme Court. The motion was resisted and denied.

March 3, 1884, the defendant moved this court to dismiss the case for want of a Federal question, and supported that motion by a printed document of sixteen pages, including among other matters, the auditor's petition, the answer of the company, the constitutional objections, and the final decree of the State Circuit Court. That motion was also resisted and denied.

III.

BRIEF OF THE ARGUMENT.

1. INTRODUCTORY CONSIDERATIONS.

The case stated presents the two-fold question whether the corporate person of the Chicago Life Insurance Company has incurred the penalty of death adjudged against it by the Illinois courts; and whether the natural persons who constitute the corporation, and are authorized by its charter to act and speak in its name, and by that name to sue and be sued, plead and be impleaded in all courts of justice, have forfeited all the property, and the contract rights of which the corporate person is the lawful custodian and trustee. Rec., 100, Charter, Sec. 1. By that authority those natural persons, in the name of the corporate body of which they are the living soul, now appeal to this court for the protection to which they are entitled under the Constitution of the United States.

On the part of the plaintiff in error, it is insisted that the proceedings of the State authorities against it are wholly in violation of justice, and the law of the land, and constitute a striking illustration of what may be called the unconscious malignity of political intermeddling with business affairs. Official zeal to render a supposed public service results in no good to any one, but in immense public and private injury, because the entire proceeding is founded on false principles.

Remedial justice is confined to the prevention of wrongs immediately and absolutely threatened and impending, and to the enforcement of remedies for

wrongs actually done. But the case of the Chicago Life Insurance Company does not fall within either of those classes. It had ample means to meet every actual obligation. It did not threaten any irreparable injury in violation of law. It had not failed to meet any actual liability. To seize and destroy it under an alleged fear that if certain contingent liabilities should mature in future years, the company might not have means to discharge them, was a flagrant usurpation and exercise of despotic power. Rec. 4, 5, 19, 60, 65.

The proceedings against the company are in violation of the law, as declared by the Illinois Supreme Court itself. That court holds it to be a fundamental error to suppose that there is any difference between the rights of natural, and those of artificial persons, in respect of legislative control for the general welfare, and that they both stand precisely upon the same footing.

Ward v. *Farwell*, 97 Ills. 608–615.

Chicago Life Ins. Co. v. *Needles*, 101 Ills., 82; Rec. 91.

Yet nothing more astounding to the judicial or the public mind could well be proposed, than to deal with a merchant, a manufacturer or other natural person, engaged in legitimate business, in precisely the same manner in which the legislature, the auditor, and courts of Illinois have dealt with the artificial person who now appeal to this court for redress. The fallacy lies in the supposition that because the merely corporate rights are of legislative grace, the property and contract rights of persons acting under corporate forms, are subject to legislative caprice.

Under our system of government all men are re-

garded as having certain inherent and *inalienable* rights, among which is the pursuit of happiness in any lawful occupation.

Con. of Ills., A. 2.

This inalienable right can not be bartered away, nor can it be forfeited, except for crime, whereof there has been a due conviction.

The legislative authority may, indeed, *regulate* the exercise of that right. They may, indeed, enforce such regulation by *reasonable* penalties, but the right itself is beyond the legislative power. It is not derived from the government, but the government is rather created to protect its exercise. The government may either give or withhold special privileges of combination and activity, and may recall such privileges as the fundamental law may allow, but such withdrawal will, as has often been judicially determined, leave the natural right unimpaired, and the acquisitions of property and contracts made under it, while the special privileges existed, still entitled to the protection of the laws for the benefit of the natural persons for whom the corporate person stands, and for whose immediate benefit the special privileges were granted. The leading adjudications will be cited in connection with the question of the power of the legislature to impose new conditions of the corporate existence and action.

2. THE NATURE OF THE BUSINESS INVOLVED.

2. It is, perhaps, desirable, before passing to a discussion of the leading points of the controversy, to notice the nature of the business involved. Insurance is not a necessary of life. It is not a public service. It is not even "a transaction of com-

merce." It is simply a private business. Corporate privileges are not essential to it. That it affects many persons, does not change its nature. All kinds of trade affect many persons.

Paul v. *Virginia*, 8 Wall. 168.

Pensa. Tel. Co. v. *W. U. Tel. Co.*, 96 U. S. 12.

Life insurance is of comparatively modern origin. The great business of insuring lives as it now exists, is almost wholly the growth of the last half century. It is said that the first reported American case of life insurance, is *Lord* v. *Dall*, 12 Mass. 115, before Ch. J. Parker, and that he at first doubted, but finally sustained the legality of the contract.

Bliss Life Ins. 1, 2.

Life insurance is not like water, grain, or common carriage, indispensable to civilized life, and hence does not fall within the rules of regulation laid down in *Munn* v. *Illinois*, 94 U. S. 113, and *Spring Valley, etc.* v. *Schottler*, 111 U. S. 347, and like cases.

3. THE COMPANY WAS NOT INSOLVENT.

3. Although the examiner in his report claims that the company is insolvent, the auditor's petition does not make insolvency a ground of relief. It rests exclusively on the auditor's opinion that the further continuance of the company in business would be "hazardous to the insured." This strange ground for the destruction of a corporation and the distribution of its assets, will be further noticed below. But admitting for the sake of the argument only, all the charges of the examiner and the auditor to be true, and that the examiner's report is a part of the petition, and makes the alleged insolvency a ground of the proceeding, still the com-

pany was not insolvent within the legal meaning and definition of that term. Rec. 4, 6.

Where a debtor is able to meet all his engagements, *as they become due*, in the ordinary way, that is, to satisfy them in money or its equivalent without resorting to the general mass of his property, or disturbing the course of his business, he is clearly solvent. In strictness, the term insolvency imports present inability to pay. *It is descriptive of a present, not a future condition of affairs.*

Burrill on Assignments, 2d ed, 38, 40.

A person is said to be insolvent, who is under a *present inability to answer, in the ordinary course of business, the responsibility which his creditors may enforce*, by recourse to legal measures, without reference to his estate proving sufficient to pay all his debts, when ultimately wound up.

Bouvier Law Dict., "Insolvent."

4. THE OFFER OF RE-INSURANCE.

4. But let us, for the sake of the argument, assume that the ground alleged in the petition is legally sufficient and that the danger to the insured did in fact exist, it was wholly and absolutely removed as a cause of action, by the offer of re-insurance set forth in the evidence. What the policy holders held were contracts of insurance. The auditor questioned the pecuniary ability of the company. The company offered an indisputable guaranty of their contracts. This was in harmony with the policy of the Illinois insurance laws, and was at the same time the utmost that exacting justice could demand; for it assured to every policy-holder the exact thing for which he had contracted. It wholly averted the pretended danger to the insured.

Record 43, 58, 59.
Insurance Laws 27, Sec. 64.

5. THE SPECIFIC REMEDY FOR THE SUPPOSED OFFENSE.

5. And assuming again, for the sake of the argument, the alleged deficiency of assets, and waiving, for the moment, the offer of re-insurance, the auditor's proceedings are in violation of the law of the land, and of the obligation of the contract between the State and the corporation, and the contracts between the company and its policy holders. The penalty sought and decreed is a totally different one from that for which the statute specifically provides.

The deficiency section of the general insurance act is as follows:

"When the actual funds of any life insurance company doing business in this State are not of a net value equal to the net value of its policies, according to the 'combined experience' or 'actuaries' rate of mortality, with interest at *four per centum per annum, it shall be the duty of the auditor to give notice to such company and its agents to discontinue issuing new policies within this State, until such time as its funds have become equal to its liabilities*—valuing its policies as aforesaid. Any officer or agent who, *after such notice has been given, issues or delivers a new policy from and on behalf of such company, before its funds have become equal to its liabilities as aforesaid, shall forfeit, for each offense, a sum not exceeding $1,000.*" Ins. Laws, 23, S. 45, (10), Rec. 104.

The authorities are clear that in such a case the remedy given must be pursued, and that the prescribing of the particular penalty implies the exclusion of the greater penalty of a forfeiture of the

charter, where otherwise it might be sought for a violation of conditions imposed on the corporation.

Thus a violation of a law requiring a corporation to keep an alphabetical list of stockholders will not work a forfeiture of the charter, where the neglect is punished by a pecuniary penalty. The non-publication of a report required by law will not work a forfeiture, where the trustees are made personally liable for a failure. Nor will a failure to pay in the capital as required by law work a forfeiture, where for that default the stockholders are made personally liable.

The court censure, in strong terms, undue precipitancy in seizing and disposing of corporate assets in the midst of great financial difficulties, enveloping all pursuits over the whole Union; and producing great losses; when a little temporizing would have gone far to relieve the company of its embarrassments.

Baker v. *Backus*, 32 Ills. 109, 112, 115.

The legislature has no power to impose arbitrary and oppressive conditions upon the assertion and exercise of vested rights: *Conway* v. *Cable et al.*, 38 Illinois Rep., 87.

The law never favors forfeitures by construction. All laws providing for forfeitures and penalties must be strictly construed: *Chicago* v. *Rumpff*, 45 Illinois Rep. 99.

And in enforcing forfeitures, courts should never search for that construction of language which must produce a forfeiture, when it will bear another reasonable construction which will not produce such results: *Hartford Fire Insurance Company* v. *Walsh*, 54 Illinois Rep., 168.

A temporary suspension of specie payments by a bank does not work a forfeiture of the charter, especially where a penalty of twelve per cent. damages was provided: *State of Ohio* v. *The Com. Bank, etc.*, 10 Ohio Rep., 538.

Again it is declared that: A suspension of specie payment is not such a misuser or non-user as will work a forfeiture of the charter. And a statute passed subsequently to the charter, making such suspension a cause of forfeiture, can have no application to such a bank. The legislature has no power to annex new conditions, nor to impose a cause of forfeiture which was unknown to the charter: *The State* v. *Tombeckee Bank*, 2 Stew. (Ala.) Rep., 36.

Where a specific penalty has been provided by statute for a specified neglect, the act will not operate as a forfeiture of the franchise: *Commonwealth* v. *Breed*, 4 Pickering Rep., 460.

The right to compel a substantial performance of the contract of incorporation can not be taken away under a pretense of regulating the remedy. Legislative authority over remedies is confined, in these cases, to the form and course of the proceedings: *Sedgwick Stat. and Con. Law*, 609, n., citing *Walker* v. *Whitehead*, 16 Wall. 317; *Morton* v. *Valentine*, 15 La. Ann. 153, and other cases.

6. THE CHARTER NOT SUBJECT TO LEGISLATIVE ALTERATION OR REPEAL.

6. But the auditor attempts to justify his proceedings by claiming that in accepting the amendment to the charter, the corporation submitted itself to any new terms and conditions of existence that any future legislature might see fit to impose. That claim is based on the following section of the amendatory act:

SEC. 5. This act and the act to which this is an amendment shall not be deemed to *exempt* said company from the operation of such general laws as may be hereafter enacted by the General Assembly on the subject of life insurance.

The concluding section is as follows:

SEC. 6. This act shall be deemed a public act, and shall be liberally construed for the purpose therein mentioned, and shall take effect and be in force from and after its passage. Rec. 103.

By universal consent, the general rule of law is against legislative alteration or repeal.

Then he who alleges an exception, must make it clear. If the exception exist, it was created by the section above quoted. The common manner of retaining legislative control over a charter, is to reserve the power to "*alter, amend or repeal*" it. But these words of common use and settled meaning are all omitted. Nothing is said in regard to the charter itself; but it is declared that the company shall not be exempt from subsequent general laws on the subject of life insurance. The use of a new and unusual term, implies a new legislative intent. The meaning of the words used clearly shows that something less than the power to "alter, amend or repeal" was intended. What was intended? How can a fair and just effect be given to the words of the statute? Easily enough, by holding that the company is subject to all such general rules and regulations as may be prescribed, *provided* they do not in any degree impair the substantial charter rights of the corporation, under its contract with the State, on the faith of which it embarked in business, and to establish which it expended a large sum of money, and a large amount of time and toil. No new con-

dition of corporate existence, or of the exercise of the corporate franchises, can be imposed under such a provision. The only mode of enforcing such rules and regulations, is by moderate and reasonable penalties, proportioned to the nature of the case.

The presumption is in favor of the general rule, and so necessarily against the claim of legislative control. Under the original charter the company had power to do a life insurance business, though its special business was accident insurance. Charter, Sec. 1, 4; Rec., 100, 101. And there is nothing in the case to warrant the supposition that the acceptance of the non-exemption provision of the amendment, involved even the remotest idea of a consent to the arbitrary and vindictive authority exercised by the auditor in this case. The authorities in support of this position are abundant and conclusive, under the rule that "the greater includes the less." No case on the word "exempt," in such a connection, has been found, but there are numerous adjudications on a clear reservation of the right to "alter, amend or repeal."

That the power to alter or amend has a limit no one can doubt. *All agree that it can not be used to take away property already acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession, of contracts lawfully made.*

Sinking Fund Cases, 99 U. S. 720.

Again: The power of alteration and amendment is not without limit. The alterations must be reasonable; they must be made in good faith, and be consistent with the scope and object of the act of incorporation. Sheer oppression and wrong can not be inflicted under the guise of amendment or altera-

tion. Beyond the sphere of the reserved powers, the vested rights of property of corporations, in such cases, are surrounded by the same sanctions, and are as inviolable as in other cases.

Shields v. *Ohio*, 95 U. S. 319.

A reservation of the power to "amend, alter or repeal" an act of incorporation authorizes the legislature to alter it in all particulars *constituting the grant of corporate rights, privileges and immunities*. The existence of the corporation, and its franchises and immunities *derived directly from the State*, were thus kept under its control. Rights and interests acquired by the company, not constituting a part of the contract of incorporation, stand upon a different footing.

Railroad Co. v. *Maine*, 96 U. S. 499.

A statute which declares that all contracts entered into after its passage shall be subject to the power of future legislatures, to make such changes in the obligations created by them as they may see fit, * * * conflicts with all our ideas of constitutional government. The right to contract is not derived from constitutional or legislative grant, but is inherent in the citizen. The regulation of this right, under the Constitution, is vested in the legislature. * * * *But the right can not be taken away, or even impaired by any power in the government; nor, when once exercised, so as to impose obligations upon the contracting parties, can those obligations be lessened, increased, or in any manner interfered with.* The right to contract obligations, and the obligations assumed, are of equal sanctity, and free from legislative control.

Goenen v. *Schroeder*, 8 Minn. R. 393.

Where a right to repeal a charter at the mere pleasure of the legislature is exercised, "personal and real property acquired by the corporation during its lawful existence, *rights of contract*, or choses in action, so acquired, and which do not *in their nature* depend upon the general powers conferred by the charter, are not destroyed by such a repeal; and the courts may, if the legislature does not provide some special remedy, enforce such rights by the means within their power."

"The rights of the shareholders of such a corporation to their interest in its property, are not annihilated by such a repeal, and there must remain in the courts the power to protect those rights."

Greenwood v. *Freight Co.*, 105 U. S. 13, 19.

That sovereign authority to protect and enforce rights for which the affirmative law does not provide a plain and adequate remedy, is vested in the courts of equity, and it is both the right and the duty of those courts to devise and apply whatever forms of procedure such an emergency may demand. For the court of equity is not like the law tribunal, a passive and unconcerned authority, but is like the justice it serves, an active and zealous power, aggressive against oppression, far-seeing for the detection of wrong, and potent for the protection of the right.

"There is no well considered case in which it has been held that a legislature, under power to amend a charter, might take from the corporation any of its substantial property or property rights."

Detroit v. *Plank Road Co.*, 43 Mich. 147.

But precisely what the Illinois auditor seeks to do in the case at bar, is to take from the Chicago Life Insurance Company, its directors and stockholders, all its substantial property and property rights, in addition to all its corporate rights and franchises, for an alleged violation of a statutory regulation, manifestly procured in the interest of the older and richer insurance companies, to prevent or hinder competition in the business of selling policies.

But if the provision of the amended charter which declares that it shall not be *deemed* to exempt the company from the operation of future general laws on the subject of life insurance has any larger meaning than that above considered, it is void as an attempt to exercise judicial power. It is directed, not to the corporation, but to the courts, that alone have the authority to determine the effect of contracts, and the meaning of statutes. The enactment is equivalent to a legislative declaration that the courts shall not construe and interpret the charter according to the established rules of law, and shall not hold that the incorporators are entitled to the rights which the charter grants. The Illinois Constitution expressly declares the general rule that no person or collection of persons, being one of the departments of government, legislative, executive and judicial, shall exercise any power properly belonging to either of the others, except as expressly permitted. Cons. Ills. A. 3.

This is not a case where legislative construction can have the force of a new enactment to govern future cases, because the case to which it applies is wholly past. Sedgwick S. & C. Law, 214, 227, and cases cited.

THE POLICE POWER DOES NOT WARRANT THE AUDITOR'S PROCEEDINGS.

7. But the validity of the statutes drawn in question, and of the authority exercised by the auditor, are alleged to be warranted by the police power of the State. This claim can not be sustained. It is true, in a general sense, that the rights insured to private corporations by their charters, and the manner of their exercise, are subject to such new regulations as from time to time may be made by the State, with a view to the public protection, health and safety, and to properly guard the rights of other individuals and corporations. But the limit to the exercise of the police power in these cases must be this: *The regulations must have reference to the comfort, safety or welfare of society; they must not conflict with any of the provisions of the charter; and they must not, under pretense of regulation, take from the corporation any of the essential rights and privileges, which the charter confers. In short, they must be police regulations in fact, and not amendments of the charter, in curtailment of the corporate franchise.*

And even a provision in a corporate charter, empowering the legislature to alter, modify or repeal it; would not authorize a subsequent act which, on pretense of amendment, or of a police regulation, would have the effect to appropriate a portion of the corporate property to the public use.

Cooley Con. Lim., 576-7-8.

The legislature has not the power to enlarge a forfeiture provided by the charter, nor to impose a new and additional term of the contract created by the incorporation. Such acts would be in conflict with the Constitution of the United States. Nor

can an act requiring a road to be kept in a more perfect condition, and declaring a larger forfeiture, for default, be upheld as police regulations. *The police power is confined to such regulations "as are so clearly necessary to the safety, comfort or well being of society, or so imperatively required by the public necessity, as to lead to the rational and satisfactory conclusion that the framers of the Constitution could not, as men of ordinary prudence and foresight, have intended to prohibit their exercise in the particular case."*

People v. *Plank Road Co.*, 9 Mich. R., 285, 305, 307.

As to the general liability to legislative control, natural persons and corporations stand upon the same ground.

"*If the power to impose on corporations police regulations from which others are exempt exists in the slightest degree, there is no line of limitation.*" If chartered rights may be impaired, and new duties imposed upon a corporation without compensation, in contravention of the charter, under the principal that it is merely the exercise of the police power to promote public convenience, it is a new and easy mode by which the constitutional security of private property and privileges may be broken down.

State v. *Noyes*, 47 Maine Rep. 214.

This is also the doctrine of the Illinois Supreme Court.

Private corporations, created for business purposes, are artificial beings, clothed with certain rights and privileges, and are permitted to own and acquire property for certain purposes and to a limited extent; and when so created, they are subject to the same legislative control that natural persons are under like circumstances.

With certain constitutional limitations, the rights of all persons, whether natural or artificial, are subject to such legislative control as the legislature may deem necessary for the general welfare; and *it is a fundamental error to suppose there is any difference in this respect between the rights of natural and artificial persons. They both stand precisely upon the same footing.*

Ward v. *Farwell et al.*, 79 Illinois Rep. 608.

The rights, privileges, and immunities of citizens are not lost, nor can they be aliened or forfeited by any association for the conduct of a lawful business, no matter what the form of such an association may be. In this respect a partnership and a corporation stand on the same ground. If the Illinois legislature had reserved and had exercised an unqualified power to repeal the charter of the Chicago Life Insurance Company, the officers and directors would have remained in control of all the corporate assets, and would have continued to be responsible for them as trustees. And those trustees, with the consent, either express or implied, of the persons interested as stockholders, might, in such a case, re-arrange the affairs of the corporation, and continue the business of insurance under the law of partnerships or of trusts.

Persons interested in a corporation are still entitled to "*the equal protection of the laws*;" and the present case shows the need of extending that great guaranty to that class of citizens.

Con. U. S. Amend. XIV, S. 1.

8. NO FORFEITURE BY ACCIDENT, INADVERTENCE OR MISTAKE.

Charter rights can not be forfeited by accident, inadvertence or mistake.

In a proceeding to forfeit corporate franchises, the alleged unlawful acts must be averred and proved to have been willfully or negligently done. An averment that "the defendant has misappropriated and misapplied the money received from the State, etc., is bad for uncertainty.

Harris v. *R. R. Co.*, 51 Miss. 606, 610.

But in the present case, the directors acted with all due diligence. This is manifest from the evidence above cited. In the language of a leading text book:

"Directors of corporations are not liable for misjudgment merely. They are not supposed to have attained infallibility, and, therefore do not stipulate to be free from error. To subject them to responsibility, the error must be so gross as to warrant the imputation of fraud, or at least must indicate a want of the usual and necessary knowledge required for the duties assumed.

"They do not become sureties for the fidelity and good behavior of officers and agents appointed by them. If the reputation of a secretary be good, they have a right to repose confidence in him, in everything within the scope of his duties."

Angell & A. Corp., Sec. 314 and cases cited.

And if this be true of the directors, much more must it be the rule as to the stockholders and the corporate person. It would surely be a monstrous wrong to hold that the secret unlawful act of a single officer of a corporation can and does have the

effect to forfeit the rights of a score of stockholders, and of hundreds of policy-holders, when the directors, immediately upon the discovery of the wrong, stand ready and anxious to make full restoration.

9. THE SPECIFIC VIOLATIONS OF THE NATIONAL CONSTITUTION.

In the present case, not only are the auditor's charges void for uncertainty and immateriality, but the statute under which he exercised authority to act, is also void upon the same grounds. The opinion of a political officer can never be recognized under our system of government, as the proper basis of a judicial proceeding to forfeit property rights. Nor can the opinion of any third person, whether private or official, that the continuance of business under a lawful and valid contract is "*dangerous*" to one of the parties, ever constitute a valid ground for annulling the contract, and destroying the business, without any complaint from the party alleged to be in "danger." Under our constitution and laws the judicial machinery is not put in motion, except at the instance of some one who has a grievance of which he complains. In the case at bar no creditor or policy holder of the Chicago Life Insurance Company had ever made complaint, or asked the intervention of the auditor or any other officer, agency or department of the government. In the great wrong which he committed the auditor was a volunteer, and his proceedings violate the first principles of justice and the settled rules of American jurisprudence.

Thus specifically do the Illinois statutes, and the authority exercised under them by the auditor, violate the provisions of the national constitution.

They impair the obligations of the contract between the State and said Chicago Life Insurance Company, and the contracts between said company and its policy holders, and the contracts between said company and its creditors, contrary to section ten of article one of said constitution.

They also uphold an unreasonable seizure of the assets of said corporation, contrary to amendment four of said constitution.

They also deny to all the persons interested in said company, or in any of the contracts specified, the equal protection of the laws, contrary to section one of amendment fourteen of said constitution. Whether the corporation be technically a "person," within the meaning of the amendment, is not material, for "whenever it is necessary for the protection of contract or property rights, the courts will look through the ideal entity and name of the corporation to the persons who compose it, and protect them, though the process be in its name." The right to the equal protection of the laws is not forfeited by the act of becoming a member of a non-municipal corporation.

Society, etc., v. *New Haven*, 8 Wheat. 464.
United States v. *Devaux*, 5 Cranch, 61, 86, 92.
Marshall v. *Railroad Co.*, 16 How. 326.
The San Mateo Railroad Tax Case, 13 Fed. Rep. 722, 733, 748.
The Santa Clara Railroad Tax Case, 18 Fed. Rep. 385, 402, 407.

In cases like the present, this court will determine for itself all the questions involved, and will not be bound by any views which the local courts may have expressed. And if this court shall find a wrong committed in violation of the national con-

stitution, through *an erroneous construction and application* of the State constitution and statutes, this court will give relief.

Asylum v. *New Orleans*, 105 U. S. 362, 369.
Wright v. *Nagle*, 101 U. S. 794.

And this court will decide for itself, independently of the decision of the State court, whether there is a contract, and whether its obligation is impaired; and if the decision of the question as to the existence of the alleged contract requires a construction of State constitutions and laws, this court is not necessarily governed by previous decisions of the State courts upon the same or similar points, except where they constitute a rule of property.

Louisville, etc., R. R. Co. v. *Palmer*, 109 U. S. 244, 256.
State Bank of Ohio v. *Knoop*, 16 How. 369, 391.
Burgess v. *Seligman*, 107 U. S. 20.

In a case like this, the court will consider, not the purpose of the law, but its effect; and may hold a State statute unconstitutional and void as applied to one class of cases, while it may be upheld as to a different class. One statute, standing by itself, may be free from objection, but in connection with another it may produce a result which violates the Constitution. In such a case this court will annul that result, and direct a restoration of what has been done in contravention of the paramount law, leaving the statutes to stand for enforcement in all proper cases.

Supervisors v. *Stanley*, 105 U. S. 313, 315.
State Freight Tax Case, 15 Wall. 232; and other cases cited.

The opinions of the Illinois Supreme Court are a part of the record under a statute of that State and may be examined here for the purpose of ascertaining whether this writ of error properly raises any question determined by the State court, adversely to a right, title or immunity, under the constitution or laws of the United States, and specially set up and claimed by the party bringing the writ: *Gross* v. *Mortgage Co.* 108 U. S. 477, 485, 486.

No device can here avail to prevent an examination of the alleged wrong and oppression; or to uphold a substantial violation of any guaranty of the national constitution. Here, at last, justice will be done.

10. THE JUSTICE OF THE COMPANY'S DEFENSE.

10. The defense of the Chicago Life Insurance Company to the auditor's suit, is just. It is consistent with fair dealing, and a high standard of business integrity. It involves no false principle of corporate conduct, nor any peril of dangerous precedent to holders of insurance policies. It was the auditor's proceeding, not the acts of the directors, that wrecked the business of the company. The re-insurance offered by the directors would have been a complete and perfect protection to every policy holder and creditor of the corporation. The flight of the secretary, and the wild reports of losses in speculations, published in the newspapers, at first misled the directors, and they were further misled by the belief that if they acquiesced in the appointment of a receiver, they would have his friendly concurrence in reinstating the company. Rec. 59, 60, 67, 68.

But it saved all its rights, and put the auditor to

strict proof. It made no waiver or confession by which its defense can be impaired, or the auditor's case upheld.

The Chicago Life Insurance Company invokes no technical rule to escape a just liability. It seeks no special indulgence by urging apology or excuse for admitted wrong. It did admit upon the record that its secretary had disappeared, leaving the affairs of the company in some confusion. Rec. 8. But it denied, in the same pleading, all the auditor's charges, and all ground for an injunction and receiver. It now demands justice and liberty, according to law. It asks the enforcement by this court of the guaranties of the Constitution of the United States.

Perhaps the strangest matter alleged in defense of the auditor's usurpation and oppression, is that suggested in his earnest attempt to prevent a hearing of this case, by this court, upon its merits. It is, in substance, that by begging for an opportunity to re-insure all its risks, and praying the permission of the court to perfect some scheme for the settlement of its own affairs, the Chicago Life Insurance Company has waived the rights which it expressly saves and urges in its answer, and otherwise throughout the record. The hand of the company was in the lion's mouth, and it did not strike him while it hoped he might let it go. But suppose the company did submit to the auditor's suit, and the receivers custody, till the cause was finally heard upon its merits in the Circuit Court. Was not the company then entitled to the restoration of its affairs to its control? Was not its vindication then complete? What else could it do but await that vindication?

Its business had been arrested by the auditor's

proceeding, and 1877 was a dark year for business enterprises in this country. If the company had succeeded in escaping from the auditor and the Circuit Court, its true policy would still have been to re-insure its risks, husband its resources and prepare for the resumption of business at some more auspicious time. But suppose the company had declared upon the record, in the most explicit terms, its intention to close up its affairs, and permanently retire from business, that would be no consent to the auditor's unrighteous suit, nor any possible waiver of any point of its defense; for the Illinois statutes, in express terms authorize it to do so. Illinois Insurance Laws, 27.

Almost equally surprising is the idea urged in the application to dismiss the cause without a hearing of its merits, that this court can not properly entertain the constitutional questions which the record expressly presents, because the Illinois Supreme Court ignored them in its opinion, and decided them adversely to the plaintiff in error without discussion. The certificate of evidence which sets forth those questions is as much a part of the record as the pleadings, and the final decree in the case refers to the grounds upon which the company sought a decree in its favor, and preserves the exceptions of the company to the denial of its prayer.

Record, 69, 81, 84, *19*, *20*, *22*, *33*, 86, 87, [*Tenth.*]

The following authorities are conclusive on the point that the Federal questions are properly and fully presented.:

Bridge Co. v. *Railroad Co.*, 2 Otto.315.
University v. *People*, 9 Otto, 309.
Murray v. *Charleston*, 6 Otto, 432.
Railroad Co. v. *Maryland*, 21 Wall. 457.

Binghampton Bridge Case, 3 Wall. 51.
Bridge v. *Hoboken Co.*, 1 Wall. 116.

Great and irreparable as would be the wrong and injury to the stockholders and other interested in the Chicago Life Insurance Company, of affirming the decree of the Illinois courts which perpetually enjoins it from transacting its proper business, and awards the irreclaimable disposition of all its assets, the injury that would result to the country from the precedent which would thereby be established, would be immeasurably greater. Such a precedent would be a standing menace to other business corporations throughout the United States, and would encourage political intrusion into the affairs of such corporations, and their subjection to tribute for partisan purposes. I do not submit this consideration as a question of policy, for that question belongs to a different department of our complex system of government. But it may properly be urged here as a reason why such a construction and application of the constitutional provisions should be adopted in this case, as will suppress the evils they intended to prevent, and advance the remedy it was their purpose to give.

The power to regulate, is not the power to put to death. Confiscation of the entire corporate estate, is not a reasonable penalty for violating a regulation of the corporate business. But in this case, both the validity and the applicability of the pretended regulation are denied. But if both were admitted, the facts necessary to make a case are wanting. The equity and justice of the defense are clearly established by the proofs.

Each succeeding decade of our history makes more and more clear the need of judicial unity, and ulti-

mate national control. The jurisprudence of a country should be one. Its parts should be harmonious. Its ministers should dispense the same justice in all localities. To secure that end, the national Constitution declares that

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, * * * * * * * * shall be the supreme law of the land; *and the judges in every State shall be bound thereby;* anything in the constitution or laws of any State to the contrary notwithstanding."

Con. U. S., Art. VI, ¶ *second*.

The judges of the Illinois Circuit and Supreme Courts have disregarded this high mandate, and have decreed the death penalty of a perpetual injunction against the Chicago Life Insurance Company, and the administration and distribution of all its estate, in violation of that supreme law. The Company therefore appeals to this court to hold that it has done "nothing worthy of death or of bonds;" and thereupon to reverse that decree, and direct that it be restored to all things which it hath lost by reason of the suit wherein that decree was given, thereby adjudging justice in the present case, and forbidding by an authoritative precedent, a repetition in any other case, of the wrongs which this Company has suffered at the hands of the State authorities, under pretense of protecting parties who had no grievance, and had made no complaint, and who are sure to find that, whatever may be the faults of corporate management, political supervision is far more fruitful of disastrous results.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1884.

No. 184.

THE CHICAGO LIFE INSURANCE COMPANY,
Plaintiff in Error,

vs.

THOMAS B. NEEDLES, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS,
Defendant in Error.

In Error to the Supreme Court of Illinois.

BRIEF FOR DEFENDANT IN ERROR.

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STATEMENT.

The statement of the case contained in the brief of plaintiff in error is wanting in so many important facts, and gives to so many which it purports to state a delicate coloring and artistic shading which seriously impair their usefulness, and deftly mingles so much of fact as therein does appear with inference, imagination and argument, that it becomes the duty of counsel for defendant in error, under the rule of this court, to make a clear, succinct and accurate statement of the facts of the case.

The plaintiff in error was incorporated by an act of the legislature of Illinois on the 16th day of February, 1865, under the name of the "Travelers Insurance Com-"pany" (Rec., 100), and by an amendment to the charter, approved February 21, 1867, the name of the company was changed to the "Chicago Life Insurance Com-"pany," and its powers and functions were enlarged in several particulars. (Rec., 102.) The specific business to be transacted by the Travelers Insurance Company was the insuring of persons against the accidental loss of life or personal injury while traveling, while by the amendment the company was specifically authorized to transact the business of life insurance as a stock company. By sections 2 and 3 of this amendment certain special grants were made and privileges conferred upon the company, to be exercised in the transaction of its business, while by section 5 of the amendment as follows:

"SEC. 5. This act and the act to which this is an "amendment shall not be deemed to exempt said company "from the operation of such general laws as may be here-"after enacted by the general assembly on the subject of "life insurance."

On the 29th day of March, 1867, at a regular meeting of the board of directors of the Travelers Insurance Company, a quorum being present, a motion was duly made and carried, as follows: "That hereafter the "amendment to the charter of the company be adopted, "and that hereafter the company be known as the Chi-"cago Life Insurance Company" (Rec., 74), and it thereupon began to transact the business of life insurance under the name of the Chicago Life Insurance Company, and continued such business until the appointment of a receiver in 1877, as hereinafter stated.

It is contended by defendant in error that by virtue of the limitations and restrictions in section 5 the company was expressly made subject to the insurance laws of Illinois, enacted in 1869 and 1874, the same being general laws enacted by the general assembly on the subject of life insurance, and the act of 1874 being the same law under which proceedings were instituted by the auditor in this case, and which plaintiff in error claims to be unconstitutional and void. Before the adoption of this amendment stock of the par value of one hundred thousand dollars had been subscribed for, and ten per cent. thereof paid in cash. (Rec., 37 and 38.) These payments, with perhaps one exception, are the only payments ever made upon stock subscriptions. The remainder of such subscriptions, after the change of corporate name, were evidenced by notes of the subscribers, payable in nearly all cases on demand and without interest, and secured by a deposit of real

estate securities and other collaterals. The company never made a demand upon the stock subscribers for the payment of such notes (Rec., 37), and being made payable only upon demand, no interest accrued upon these notes, and none was collected by the company. Some of the securities deposited as collateral to the stock subscription notes bore interest, but such interest was in all cases received and held by the stockholders who had deposited such securities. With no other capital or resources whatever the company proceeded to transact the business of life insurance.

In 1869 the general assembly of Illinois enacted a general law regulating the business of life insurance, which went into effect on the first day of July of that year. (Illinois Insurance Laws, pp. 21 to 26.) By this act it was provided that all life insurance companies incorporated by or doing business in the State of Illinois, should be under the supervision and control of the auditor of state; that the auditor should examine the stocks, securities and mortgages constituting the guarantee capital of companies incorporated under the laws of Illinois; that he should make, or cause to be made, an examination of the affairs of any life insurance company doing business in the State of Illinois, whenever he deemed it expedient so to do; that every life insurance company doing business in the State of Illinois should make and file in his office an annual statement of its business, standing and affairs in the form prescribed by law, which should be signed and sworn to by the president and secretary, and made out for the year ending on the preceding 31st day of December; that no policy should be issued by any life insurance company of Illinois until a certificate from the auditor had been obtained authorizing such issue; that no company should do busi-

ness within the state without permission of the auditor and without complying with all the provisions of the act, and that no agent should act for any life insurance company in taking risks or transacting its business without a license so to do, and in general giving the auditor such power and authority in the premises as was deemed necessary to protect the people of the state in their dealings with such companies, and to protect the interests of all persons having or thereafter making policy contracts with such companies, and also providing penalties for a violation of the provisions of the act. This act is almost identical with the insurance laws in force in most of the states of the Union, is intended for the same purposes, and contains substantially the same provisions.

Section 10 of this act establishes a basis for the valuation of the policies of life insurance companies doing business in Illinois, and provides that when the actual funds of any company are not of a net value equal to the net value of its policies according to the "combined "experience" or "actuaries" rate of mortality, with interest at four per cent. per annum, it shall be the duty of the auditor to give notice to such company and its agents to discontinue issuing policies until such time as its funds have become equal to its liabilities, valuing its policies in the manner above stated. (Illinois Insurance Laws, p. 23.)

In 1874 the general assembly of Illinois enacted a general law entitled "An act in regard to the dissolution of "insurance companies," which went into effect on the first day of July of that year. (Illinois Insurance Laws, pp. 35 to 37.)

Sections 1, 5 and 6 of this act are as follows:

"SECTION 1. *Be it enacted by the people of the State "of Illinois, represented in the General Assembly:* That if "the auditor of state, upon examination of any insurance "company incorporated in this state, is of the opinion that "it is insolvent, or that its condition is such as to render "its further continuance in business hazardous to the in- "sured therein, or to the public, or that it has failed to "comply with the rules, restrictions or conditions pro- "vided by law, or has exceeded or is exceeding its cor- "porate powers, he shall apply by petition to a judge of "any circuit court of this state to issue an injunction "restraining such company, in whole or in part, from "further proceeding with its business, until a full hearing "can be had, or otherwise, as he may direct. It shall "be discretionary with such judge either to issue said "injunction forthwith, or to grant an order for such com- "pany, upon such notice as he may prescribe, to show "cause why said injunction should not issue, or to cause "a hearing to be had on complaint and answer, or other- "wise, as in ordinary proceedings in equity, before deter- "mining whether an injunction shall be issued. He may "in all such cases make such orders and decrees, from "time to time, as the exigencies and equities of the case "may require, and in any case, after a full hearing of all "parties interested, may dissolve, modify or perpetuate "such injunction, and make all such orders and decrees "as may be needful to suspend, restrain or prohibit the "further continuance of the business of the company.

"SECTION 5. When the charter of any such insurance "company expires, is forfeited or annulled, or the cor- "poration is restrained from further prosecution of its "business, or is dissolved, as hereinbefore provided, the "court, on application of the auditor, or of a member, "stockholder or creditor, may, at any time before the "expiration of said two years, appoint one or more per- "sons to be receivers, to take charge of the estate and "effects of the company, including such securities as may "be deposited with the auditor or treasurer of state, and "to collect the debts due, and property belonging to it, "with power to prosecute and defend suits in the name "of the corporation, or in their own names, to appoint "agents under them, and do all other acts necessary for

"the collection, marshaling and distributing of the assets "of the company, and the closing of its concerns; and "when necessary for the final settlement of its unfinished "business, the powers of such receivers may be con- "tinued as long as the court deems necessary therefor.

"SECTION 6. The receiver shall pay all debts due "from the company, if the funds in his hands are suffi- "cient therefor, and if not, he shall distribute the same "ratably among the creditors who prove their debts, in "such manner as the court may direct, and receivers may "be authorized by the court to sell, convey and dispose "of, and convert into money, any of the securities or "assets of the company, for the purpose of paying such "debts, and distributing such funds. If there is a balance "remaining after the payment of the debts, the receiver "shall distribute the same among those who are justly "entitled thereto, as members, stockholders or otherwise, "or their legal representatives."

From 1871, down to and including 1876, the company made annual sworn reports to the auditor of state, as required by the law of 1869 (Rec., 28, 71), in all of which reports it was stated that the capital stock was $125,000, fully paid up in cash. (Rec., 69.) In 1871, the company began to declare dividends to its stockholders, and such dividends were thereafter regularly declared by the company, and drawn by the stockholders. (Rec., 28, 72.) The amount of these dividends from August 8, 1871, to February, 1877, was $55,045 (Rec., 72), and the same were drawn in direct violation of article 19 of the by-laws of the company, which provides specifically that all dividends shall be applied in payment of the capital stock subscribed until the same shall be fully paid. (Rec., 74.) All the directors and officers of the company were stockholders, and as such received the dividends so made. During a considerable period of the time while such dividends were being drawn, the company was

really insolvent, and at no time was it in a condition to justify the paying of any dividends whatever. (Rec., 29, 72, 75.) In the annual sworn statements made to the auditor of state, as required by the law of 1869, on December 31, 1873, 1874, 1875, and 1876, a large amount of property which the company did not own, and for which it had never paid, and upon which it had no claim whatever, was included and scheduled as part of its assets. (Rec., 13, 16, 28 and 75.) In the report for 1876, such securities so falsely scheduled, and none of which belonged to the company, amounted to $89,422. (Rec., 15, 16 and 75.) In some of these annual reports there was scheduled as an asset of the company a note for $15,000, secured by mortgage on real estate which was the property of its president, and which the company did not own, and to which it had no title or claim whatever. (Rec., 14.) This note, however, was afterward collected by the receiver. All these reports were sworn to by the secretary and president of the company, as required by law, and were prepared under the direction of the secretary, to whom they were known to be false and fraudulent. Any officer or director could easily have ascertained that these statements were false, since the books of the company were correctly kept in this particular (Rec., 13, 14 and 22), and upon examination clearly showed such statements to be false and fraudulent. (Rec., 16, 22, 23, 28, 55, 61 and 71.) The substance of these reports was annually tabulated in circulars, which were sent broadcast over the adjoining country for the purpose of securing business. (Rec., 45.)

The receipts of the company, as shown by its books, also varied largely from its receipts, as shown in its sworn reports to the auditor. From 1871 to 1876, this discrep-

ancy varied from $9,000 to $30,000 per annum. (Rec., 28, 71.) The total receipts of the company for these years, as shown by the sworn reports to the auditor, were $1,022,529.75, and the total receipts for the same period, as shown by the books, were $927,523.29, thus showing that the officers of the company have sworn to receiving $95,006.46 more than its actual receipts, as shown by the books. (Rec., 71.) At the same time the books of the company and the reports to the auditor show a like discrepancy as to the actual disbursements. (Rec., 28, 71.) From 1871 to 1876, the disbursements, as shown by the company's books, were $839,627.97, and as shown by the annual reports, they were $856,074.41, thus showing the expenses of the company, as reported to the auditor, to be $16,446.44 more than they actually were. (Rec., 71.) Of all these things, also, the secretary had actual knowledge, and the books were manipulated, and the false reports prepared by the secretary, or under his direction, and any officer or director of the company could have ascertained the falsity of the sworn reports from the books themselves. (Rec., 22, 55, 61.)

In January, 1877, Thomas B. Needles became auditor of public accounts, and in June of the same year he caused an examination to be made of the affairs of the company. (Rec., 4.) The report of the examiner to the auditor, made on the 6th day of July, 1877, set forth that the company had been doing a losing business for years; that its income was small and decreasing; that its salaries and expenses were large; that large annual dividends had been made to the stockholders, which were not warranted by the condition of the company; that interest had not been collected upon the securities upon which the capital stock was based; that the last annual statement

to the auditor had included $79,000 of assets which did not belong to the company; that when the examiner was ready to trace the assets through the cash, to see whether the company actually owned the assets it claimed, John W. Clapp, the secretary, suddenly disappeared; that the value of the assets of the company was $196,685, the liabilities being $344,857, including net present value of policies on the four per cent. basis, an impairment of $148,171.58; that on a six per cent. basis the impairment was $75,205.58; that the company was insolvent within the meaning of the statute, and recommending that proceedings be taken to wind up the company. (Rec., 3 to 7.) All these statements made by the examiner were true, and the condition and management of the company was even worse than by the examiner's conservative report they were represented to be. (Rec., 28, 70 to 75.)

On June 30, July 1 and July 3, after the absconding of the secretary, and the disclosure of the real condition and history of the company, long and sensational articles were published in all the daily papers of Chicago (Rec., 75), in which it was represented that Clapp had stolen nearly all the assets of the company, squandered the same in speculation, and having wrecked the concern, had fled the country, which statements were subsequently, in later accounts, somewhat modified. After the fact of such impairment of the capital had been communicated by the examiner to the board of directors, the company requested the auditor not to file his petition to close up its affairs, but to wait and permit and assist in some method whereby a temporary re-insurance might be made, and ultimately the insurable risks of the company, at least, should be transferred to some other life insurance company. The

auditor, being advised by his counsel and by the attorney general that he had no right under the law to grant this request, declined to permit such proceeding, and on the 7th day of July, 1877, filed in the Circuit court of Cook county a petition setting forth that he had caused such examination to be made; that the result of his examination and the condition, assets and liabilities of the company appeared in a schedule thereto annexed, and which was made a part thereof; that from such examination he was of the opinion that the condition of the company was such as to render its further continuance in business hazardous to the insured therein, and praying for an injunction and a receiver with the usual powers. The report of the examiner was filed with, and made an exhibit to and a part of the auditor's petition. (Rec., 3 to 7.)

On the 5th day of July, 1877, as shown by the record book of plaintiff in error, a meeting of the directors of the company was held, at which resolutions were passed reciting the action of the auditor of Illinois through his counsel, in refusing to delay the proceedings in court for the purpose of allowing the company to attempt a reinsurance, among which was the following:

"That Daniel Goodwin, Jr., be recommended to the "court as the choice of this board for the position of re-"ceiver. * * *

"That if Daniel Goodwin, Jr., be not appointed by the "court as receiver, that George M. Bogue be the second "choice of the board for that position." (Rec., 74.)

Two days later, counsel for both plaintiff and defendant in error appeared in court, and counsel for plaintiff in error moved that Daniel Goodwin, Jr., be appointed receiver, which was denied by the court, whereupon on motion of the auditor's counsel, the defendant not object-

ing of record, or otherwise, and consenting in open court for said company, pursuant to the authority of the resolution adopted by the board of directors, George M. Bogue was appointed receiver of the estate of plaintiff in error, and invested with power to take possession of the same forthwith, and to institute any and all necessary proceedings to recover the same, either at law or in equity, and the president and secretary of plaintiff in error were ordered to execute and deliver to the receiver on request and without delay all necessary deeds, conveyances and assurances of title proper and requisite, to vest in said receiver full title to all the estate of plaintiff in error. At the same time and by the same order of court plaintiff in error was enjoined and restrained until the further order of court from further proceeding with its business, and from making any transfer or disposition of its property, other than to said receiver, and from receiving or paying out any moneys. (Rec., 7.)

On the 20th day of July, 1877, plaintiff in error filed its petition in said cause, alleging that a proposition had been made before the case was commenced to re-insure the risks thereof; that the auditor had refused to permit the same to be carried out; that the negotiations were still open; that it would be for the benefit of the policy-holders if adopted; that the company, on the completion of the auditor's examination ceased business, placed its securities in safe keeping, and did not intend or desire to transact any new business; that it was important that the company be allowed to act concurrently with the receiver under the direction of the court in closing up its affairs, and that it should have the assistance of its counsel and its secretary in order that the business of the company and the winding up of its concerns might not

be wholly left to the management of persons hitherto unacquainted with its affairs. The company therefore prayed for leave to negotiate with the National Life Insurance Company, or any other life insurance company, to have such an arrangement as had been set forth carried out, but not without the approval of the court when perfected, and that the company might have leave to continue the services of its secretary and counsel to act concurrently with the receiver in the settlement of the affairs of the company, their compensation to be allowed by the court and paid out of the assets in due course of administration. A hearing was had upon the petition, and the court refused to grant the relief prayed, or any part thereof. (Rec., 77.)

The so-called proposition referred to in this petition was attached thereto, and, by its terms, distinctly declared that it was not a proposition (Rec., 78), but that it only purported to be suggestions made on behalf of the National Life Insurance Company relative to a possible plan by which plaintiff in error might be liquidated without going into the hands of a receiver; and it was distinctly stated that it was not to be considered as a proposition or as binding on the National Life Insurance Company, and that whether the National Life Insurance Company would thereafter assent to its terms would depend upon the character of its assets, the nature, kind, and number of the policies, premiums, income and other circumstances as yet unknown. (Rec., 78.) This hypothetical scheme contemplated, among other things, an alliance between the plaintiff in error, the National Life Insurance Company, or some other life insurance company, and the auditor of state, by which the best risks and the best assets of the plaintiff in error should be turned over to some

other life insurance company, which might issue a blanket policy for six months, or longer, while the change was being effected. (Rec., 78 to 80.) It was not suggested that the National Life Insurance Company or any other life insurance company entering into this arrangement should agree to insure all the risks of the plaintiff in error, but only such as might be selected; that if the National Life Insurance Company or any other life insurance company, after selecting the desirable risks of the plaintiff in error and obtaining its desirable assets should, because of the impairment of the lives, decline to reinsure the remaining risks for the remaining assets, then the Chicago Life Insurance Company could be put in the hands of a receiver, and the remaining policy-holders would then receive more than without this scheme. (Rec., 80.) The so-called proposition, as will clearly appear by an examination of the record, was simply an ingenious scheme whereby some other life insurance company might obtain all that was deemed desirable or valuable of the business and assets of the plaintiff in error, leaving the worthless residue of the assets to be afterwards administered upon by the court, and the remaining policy-holders to be ingeniously defrauded by the consent of the auditor and under the direction of the court. (Rec., 78 to 80.)

In the course of the administration of the estate, the receiver, on the 26th day of October, 1877, filed a petition asking the direction of the court in regard to the policy liability of the company, and the mode of ascertaining its value, and on the 31st day of October an order was entered directing him to ascertain the net present value of each policy, on the basis of the American table of mortality, with interest at the rate of four per cent. per an-

num, which was done, and such computation made by John J. Brinkerhoff, actuary of the insurance department of Illinois, showed the net surrender value of such policies to be $320,013.99, and the unpaid death losses $14,800, which was embodied in the report of the receiver, filed in the cause soon thereafter. Subsequently an order was entered by the court directing the receiver to pay a dividend of ten per cent. of the amount of these claims so fixed, which was done. The record does not show any actual notice to the company of these proceedings in the matter of fixing the policy liability. (Rec., 72, 73.)

The receiver proceeded with the administration of the estate, in the usual manner, from the time of his appointment until after the decision of the Supreme court of Illinois, and until by the supersedeas herein his management of the estate was restricted to its conservation. He sold and conveyed real property, collected debts, including the notes given for stock subscriptions by some of the officers of the company, instituted and defended a score of suits, and made disbursements under the order of the court, but during all this time, more than four years, no steps were taken by the company asking for the dissolution of the temporary injunction, or the discharge of the receiver, or in opposition to any of his acts as such, nor was any dissatisfaction expressed with his management of the estate. In 1881 the receiver filed two bills for the purpose of obtaining assets to pay the remaining debts of the company; one against the stockholders, to recover back the dividends illegally made by the company, and received by them, amounting to $55,045; the other against the directors of the company for disregard of their duty as such, and a violation of their fiduciary

obligation in the management of the affairs of the company, and to fix their liability for the entire deficiency, upon the ground of fraud and mismanagement.

On the first day of April, 1881, the auditor filed his motion to make the injunction theretofore granted perpetual, which motion, on notice to the company, was set for hearing on the 19th day of April, 1881. Such hearing was had, and on the 2d day of July, 1881, the court entered a decree perpetually enjoining the defendant from carrying on its business, confirming the appointment of the receiver, and directing him to proceed with the winding up of the estate. (Rec., 85.)

The plaintiff in error sued out a writ of error from the Supreme court of Illinois, seeking to reverse such decree, and the cause was heard at the September term, 1881, and the decree of the court below was sustained and the writ of error dismissed, whereupon a writ of error to the Supreme court of Illinois was sued out of this court and made a supersedeas.

The errors assigned and the printed argument in behalf of plaintiff in error seem to have been prepared upon the mistaken supposition that the entire merits of the controversy are open to review in this court, independent of the federal question supposed to be involved, and the greater portion of the argument is devoted to a discussion of the merits of the cause. As we understand the ruling of this court in *Murdock* v. *City of Memphis*, 20 Wall., 590, these questions are not open to review in this court. In that case the court give the same construction to the second section of the judiciary act of 1867, section 709 of the revised statutes, that had formerly been given to the 25th section of the judiciary act of 1789, viz: that upon a writ of

error to revise the judgment of a court of last resort of a state, the revisory power of this court is limited to the federal question, upon which alone its jurisdiction rests. If that question is found to have been properly decided the judgment of the state court will be affirmed without inquiry as to its correctness upon the merits, and with no further examination into the record. If it is found that the state court has decided the federal question erroneously, this court will so far look into the remainder of the record as to determine whether the decision of the federal question alone is sufficient to dispose of the case. If upon such examination it is found that other matters in the record actually decided by the state court are sufficient to maintain its judgment, notwithstanding its error upon the federal question, the judgment will still be affirmed. Even in such case, however, this court does not review the record to determine whether such questions were correctly decided, but only to ascertain their sufficiency to maintain the final judgment.

Much of the argument for plaintiff in error would, therefore, seem to be wholly irrelevant, since it challenges the correctness of the judgment of the state court upon many points foreign to the federal question supposed to be involved. Of the fifteen errors assigned by counsel, only the eleventh would seem to be pertinent, and to that our argument will be directed. As to all other questions we need only ask this court to consider them, in the event of its finding the judgment upon the federal question to be erroneous—such consideration, even in that event, being limited to determining whether these remaining questions, even though erroneously decided by the state court, were sufficiently broad to maintain its judgment, irrespective of the federal question.

Brief of the Argument.

I.

The insurance acts of Illinois of 1869 and 1874 are a legitimate exercise of the reserve power of the state, and do not therefore impair the obligation of the charter contract between the state and the corporation.

It is to be observed at the outset that every presumption is to be indulged in favor of the constitutionality of these statutes. Whenever the validity of acts of legislation is assailed, the burden rests upon him who attacks such legislation to clearly establish its unconstitutionality. As was said by this court in *Munn* v. *Illinois*, 94 U. S., 113:

"Every statute is presumed to be constitutional. The "courts ought not to declare one unconstitutional unless "it is clearly so. If there is doubt the expressed will of "the legislature should be sustained."

Nor is it necessary in deriving the authority for the legislation now assailed from the police power of the state, that we should attempt to define that power, or to fix with precision any limits to its exercise. Indeed, the courts have generally declined this task, since any rigid definition of the power might prevent its application to new emergencies as they arise. All are agreed, however, that it extends to the protection of the lives and property of citizens, and to the preservation of good order and safety

in the enjoyment of property and contract rights. As was said by Mr. Justice Mc Lean in the License cases, 5 Howard, 592:

"In all matters of government, and especially of police, "a wide discretion is necessary. It is not susceptible of "an exact limitation, but must be exercised under the "changing exigencies of society. In the progress of "population, of wealth and of civilization, new and vicious "indulgences spring up, which require restraints that can "only be imposed by the legislative power. When this "power shall be exerted, how far it shall be carried, and "where it shall cease, must mainly depend upon the evil "to be remedied."

So in *Beer Company* v. *Massachusetts*, 97 U. S. 33, the court say:

"Whatever differences of opinion may exist as to the "extent and boundaries of the police power, and however "difficult it may be to render a satisfactory definition of "it, there seems to be no doubt that it does extend to the "protection of the lives, health and property of the citi- "zens, and to the preservation of good order and the "public morals. The legislature cannot by any contract "divest itself of the power to provide for these objects. "They belong emphatically to that class of objects which "demand the application of the maxim, *salus populi su-* "*prema lex;* and they are to be attained and provided for "by such appropriate means as the legislative discretion "may devise. That discretion can no more be bargained "away than the power itself."

And in *Thorpe* v. *Rutland and Burlington R. Co.*, 27 Vermont, 150, Mr. Chief Justice Redfield states the general doctrine in these words:

"There is also the general police power of the state, by "which persons and property are subjected to all kinds of "restraints and burdens in order to secure the general "comfort, health and prosperity of the state; of the per- "fect right in the legislature to do which, no question

"ever was, or upon acknowledged general principles, "ever can be made, so far as natural persons are con- "cerned. And it is certainly calculated to excite surprise "and alarm that the right to do the same in regard to "railways should be made a serious question."

And Cooley, in his Constitutional Limitations (page 574), states the general doctrine thus:

"This subject has often been considered in its bearings "upon the clause of the Constitution of the United "States which forbids the states passing any laws violat- "ing the obligation of contracts; and invariably it has "been held that this clause does not so far remove from "state control the rights and properties which depend for "their existence or enforcement upon contracts as to re- "lieve them from the operation of such general regula- "tions for the good government of the state and the pro- "tection of the rights of individuals as may be deemed "important. All contracts, and all rights, it is held, are "subject to this power; and regulations which affect "them may not only be established by the state, but must "also be subject to change from time to time, with refer- "ence to the general well being of the community, as "circumstances change or as experience demonstrates "the necessity."

Within the general outlines thus fixed by courts and text writers, for the exercise of the power reserved by the state in granting all charter contracts, it is not difficult to find ample warrant for the insurance acts of Illinois of 1869 and 1874. The obvious purpose of both statutes is to ensure a just regulation of the business of life insurance, and the protection of citizens in their contract rights, in the course of such business. In this respect the charter contract of an insurance company with the state is no more sacred than is the tenure by which any citizen holds his property or contract rights. That artificial being, the body politic and corporate, deriving

its existence from the state, stands precisely upon the same footing as to the exercise of its contract rights with all private citizens, and is equally subject to the exercise of the reserved power of the state. Annexed to every grant of corporate franchises by the state, are certain implied undertakings, which are as much a part of the contract as if embodied in apt words in the charter itself. Among these implied undertakings are the agreement upon the part of the corporation, that it will accept the franchises conferred subject to the rights of the sovereign to reclaim them for manifest misuser or abuse, and the further implied obligation, that it will exercise the franchises granted in furtherance of the objects of its creation, and subject to such just regulations as the state may impose, to prevent an improper use of the privileges granted.

The statement of these elementary doctrines is only the statement in another form of the proposition that the charter contract is in effect but a species of property, no more removed from the scope of state regulation, than other kinds of property. And in this, as in all other cases of property, by whatever tenure held, the power of the state to prevent by appropriate legislation the hurtful use of any property is supreme. The only limit which the courts have thus far placed upon the exercise of this reserved power of the state, is that it must find expression through police regulations, which are such in fact, and not merely disguised as such for the purpose of amending the charter contract, or taking away the franchises granted, under pretense of regulation.

The fact that the shareholders of a corporation may sustain personal loss by legislation of the nature of that

under consideration, in itself affords no reason why such legislation should not be upheld. Loss and inconvenience to some persons in the use and enjoyment of property, are the frequent, if not the usual results of the exercise of the police power. Most legislation of this character embraces certain checks and restraints upon the enjoyment of property and of contract rights, which, while necessary for the protection of the public, yet depreciate the value of those rights to their owners. But the possibility or even certainty of injury to the stockholders of a corporation as the result of such legislation, has never been held of itself to render the legislation unconstitutional. All such considerations are resolved by the simple maxim that one must use his own property in such manner as not to injure others. And while it is generally true that the law recognizes the right of the citizen to make such use of his property as he sees fit, yet such recognition presupposes the important condition to the exercise of this right, that he must please to do with his property as the law permits; and in all such cases the common good of all citizens is held to be paramount to the uncontrolled exercise of the rights of the few.

To ensure the due preservation of the property and contract rights of the great mass of citizens, the legislative power of the state must be held to be sufficiently flexible to meet new emergencies as they arise. The growth and expansion of specific branches of business may remove special cases as they from time to time occur beyond the line of fixed precedents established by authoritative decisions of the courts. But such growth can never remove the new exigencies from the scope of that legislative control which is reserved by the state, since the courts have uniformly held this reserve power

to be sufficiently expansive to meet new cases as they arise.

Tested by these fundamental principles, the acts in question could well be sustained, even in the absence of judicial decisions for their support. But we are not without well-considered precedents to sustain this legislation. *Commonwealth* v. *Farmers' and Mechanics' Bank*, 21 Pick., 542, is a case directly in point, the proceedings there had being under a statute almost identical with the Illinois insurance act of 1874. Indeed, the framers of the act of 1874 seem to have had the Massachusetts statute before them, since many of its provisions are adopted almost literally. The Farmers' and Mechanics' Bank was incorporated in 1836. In 1838 a statute was passed by the legislature of Massachusetts which provided that bank commissioners should be appointed by the governor; that they should visit every bank and have free access to its vaults, books and papers; that they might examine under oath the officers or agents of the bank in relation to the transaction and condition of its business:

"That if upon examination of any bank, a majority of "said commissioners shall be of opinion that the same is "insolvent, or that its condition is such as to render its "further progress hazardous to the public, or to those "having funds in its custody, and also that the said bank "has exceeded its powers or has failed to comply with "all of the rules, restrictions and conditions provided by "law, they may apply to some one of the justices of the "supreme judicial court to issue an injunction to restrain "said corporation from further proceeding with its busi- "ness. And such justice shall forthwith issue such "process, and after a full hearing may dissolve the said "injunction, or make the same perpetual, and make such "orders and decrees to suspend, restrain or prohibit the "further prosecuting of the business of such corporation "as may be needful in the premises, according to the

"course of chancery proceedings, and at his discretion "may appoint agents or receivers to take possession of "the property and effects of the corporation."

Under this statute a bill was filed by the bank commissioners against the Farmers' and Mechanics' bank, alleging that the condition of the bank was such as to render its further progress hazardous to the public. The bill prayed that the bank might be enjoined from further proceeding with its business, and that a receiver be appointed to take possession of its property, and to apply the same in discharge of its liabilities. An injunction was accordingly granted. It was insisted by the bank, as in this case, that the statute impaired the charter contract, and was therefore unconstitutional. The court held the act to be constitational, and in an elaborate and well considered opinion by Chief Justice Shaw, say (page 550):

"The manifest object which the legislature had "in view was to provide as far as practicable for the "prevention and redress of the evils both to the public "and to individuals, proceeding from the violation of "their charters by banks, and from their insolvency. "The object was to prevent their becoming dangerous "to the public by their mismanagement and breach of "the laws; and to provide relief for their creditors, as "far as possible, when they have become insolvent. "When it is considered how important it is to all the "great interests of the community that banks should be "managed uprightly and with integrity, and according "to rules of law prescribed for their regulation, in their "charters and by general laws, and how important it is "that they should enjoy the confidence of the community, "there seems to be no doubt that the objects proposed "are proper subjects for the exercise of legislative power. "In case therefore, either of violation of charter or of in- "solvency, it is a legitimate exercise of legislative power "to provide, first, for a proper and effectual mode of as-

"certaining the facts, by a judicial investigation, upon "which the supposed delinquency depends; and secondly for securing the assets of the delinquent institution to "as large an extent as possible, in order to provide for "a payment in full amongst all the creditors, or if not "sufficient for that purpose, then for an equal distribution amongst the stockholders and others interested. "Supposing these to be suitable and proper objects for "the exercise of legislative power, the more material "question is, whether the means provided by this statute "are legitimate. Whenever either a forfeiture of charter or insolvency are to be inquired into there must be "some mode of judicial proceeding, some suit must be "instituted. Such mode may be properly directed by "law, subject only to the conditions that it be fair and "impartial, calculated to secure and preserve the rights "of all parties to be affected by it. It is desirable that "it should be as nearly conformable as conveniently may "be to the course of judicial proceedings in like cases. "Such a suit may to a certain extent interfere with the "liberty of action, and even with the right of property, of "such institution, but this cannot be considered as going "beyond the limits which justice requires, and which the "law in like cases allows, if it extend no further than to "preserve the property until the inquiry can be had, and "to secure it for a distribution amongst creditors, stockholders and others entitled to it, in case such should be "the final judgment upon such inquiry."

Commercial Bank of Rodney v. *Mississippi*, 4 Smedes & Marshall, 439, was also decided under a statute closely resembling the Illinois act of 1874. The proceeding was an information in the nature of a *quo warranto*, charging the bank with a forfeiture of its corporate franchises. The bank was incorporated in 1836, and the action was instituted under a statute passed in 1843, which authorized proceedings in *quo warranto* by the state's attorney whenever an affidavit should be presented to him charging that any incorporated bank had been guilty of a violation of its charter. The statute also provided that

upon the filing of such information, the clerk of the court should issue an injunction as a matter of right on behalf of the state to restrain all persons from collecting any demands due to the bank, and that the court rendering the judgment of forfeiture should appoint one or more trustees to collect the debts due to the corporation, and to sell and dispose of all its property and apply the proceeds in payment of the corporate debts. It was objected to the proceeding that the statute upon which it was founded impaired the obligation of the charter contract and was therefore inoperative and void. The court held the statute to be constitutional, and sustained the proceedings. Mr. Justice CLAYTON (page 492) says:

"There are always implied contracts in every charter, if "not express, that the corporation shall perform certain "trusts and discharge certain duties, and upon breach of "these conditions the government may resume the fran-"chise. * * And if the state seeks to enforce its rights "and to exact the forfeiture, the courts of the country have "only to award the judicial consequence. There is nothing "in the laws or the constitution to prevent it. * * Be-"fore the corporation is proceeded against by *scire facias* "or *quo warranto*, a bill in chancery may be entertained "against it to restrain it from the misapplication of its "funds. * * If a court of equity is in the possession of "the uncontrolled exercise of this authority upon the gen-"eral principle of its jurisdiction, it is difficult to conceive "how an act of the legislature can be arraigned as uncon-"stitutional for enacting in substance the same provisions."

Bank of Columbia v. *Attorney General*, 3 Wend., 588, was an information in chancery filed by the attorney general of New York, for the purpose of winding up an insolvent bank under a statute passed in April, 1825, the bank having been incorporated in 1792. Section 17 of the act of 1825, under which the proceeding was instituted, was as follows:

"That it shall and may be lawful for the attorney gen-
"eral of this state, and it is hereby made his duty when-
"ever any incorporated bank is insolvent and unable to
"pay its debts, or has violated any of the provisions of
"the act incorporating such company, and also, it shall be
"lawful for any creditor of any such company to apply
"by petition to the court of chancery, setting forth the
"facts and circumstances of the case; and upon its being
"proved to such court that such company is insolvent, or
"that it has violated any of the provisions of the act in-
"corporating such company, or of any other act which
"shall be binding upon such company, it shall and
"may be lawful for such court to issue an injunction to
"restrain such company and its officers from exercising
"any of the privileges or franchises granted by the act
"incorporating such company, or by any other act, and
"from collecting or receiving any debts, and from paying
"out or in any way transferring any of the moneys or
"effects of such company, until such court shall
"otherwise order; and it shall be lawful for such court to
"appoint a receiver of the property, moneys and effects
"of said company, and to distribute the same among the
"fair and honest creditors thereof."

An injunction was granted, and a receiver appointed, from which order the bank appealed. To the point that the statute impaired the obligation of the charter contract, Mr. Senator Benton uses the following language, page 610:

"The appellants claim certain liberties, privileges and
"franchises by an act or acts of the legislature, and insist
"that the act of 1825, chapter 325, is unconstitutional
"and void. In what respect then does this act, and par-
"ticularly the 17th section, impair the validity of the
"grant to the appellants? Does it profess to alter, modi-
"fy, or take away any vested right? Certainly not, any
"farther than to provide certain peculiar and efficient
"remedies upon the happening of certain contingencies;
"and these remedies are applicable to all banking institu-
"tions of the state created under its authority; but so
"long as the conditions of the grant are performed on the

"part of the grantees or corporators, so long they re-
"main unmolested by any proceeding under this section.
"It is not pretended by the appellants that they by their
"grant have a right to refuse payment of their notes or
"bills when presented at their bank. The provision com-
"plained of is concisely this: If a banking corporation
"violate the conditions of its charter, or become insolvent
"without any other act of mis-user, then certain proceed-
"ings may be instituted for the purpose of annulling the
"grant, or of preserving a remnant of its property and
"effects for the creditors of the corporation. A change
"or modification of the law authorizing the commence-
"ment and prosecution of suits to judgment, in a particu-
"lar way, limiting the time within which actions may be
"commenced for preserving property from waste and de-
"struction, and insuring a faithful application of the pro-
"ceeds to the purposes intended, involve no violation of a
"grant or contract. The act must be direct and specific
"in its object, pointed in its details, and must be absolute
"and positive, not depending upon a contingency."

State of Missouri v. *Mathews*, 44 Mo., 523, is also directly in point. Mathews was indicted as president of an insurance company, for refusing to make a report of the condition of his company to the superintendent of the insurance department of the state, under a general insurance act requiring such reports, which was passed after the company was incorporated. It was objected that the statute under which the report was required impaired the obligation of the charter contract. The judgment of conviction was affirmed by the Supreme court, Mr. Justice WAGNER delivering the opinion. Upon the point under discussion the court say (p. 530):

"Corporations are, and of right ought to be, as much
"subject to police regulations as natural persons. The
"injury resulting from violations of law by them may be
"even greater than where the infraction comes from indi-
"viduals. It is the duty of the state to protect her citizens
"in all their rights, and this power, inherent in every

"sovereignty, cannot be surrendered even in the granting "of a charter. In these days, when corporations are "multiplied to an almost endless extent, when the business "of insurance has swelled into enormous magnitude, when "corporations have received large premiums and failed "to pay their losses on account of mismanagement and "insolvency, it is simply justice to the community that "thorough regulations should be adopted for its protection. "The insurance laws of this state were intended to furnish "such protection by investing the superintendent with "sufficient power to institute an examination into the "affairs and management of the various companies doing "business within our territorial limits. If the examination "proves satisfactory, the people can then rely upon their "safety, and patronize them with confidence; if they are "shown to be unreliable and unsafe, the proper steps may "be taken to place them in liquidation, and their power "for defrauding the public will cease. We find no objec- "tion to the law on any ground that has been urged "against it. The judgment will therefore be affirmed."

While this court has never been called upon to construe directly statutes of the nature of those under consideration, as applied to insurance companies, yet one of its opinions, at least, would seem to be almost prophetic as to its judgment in this cause. In the Sinking Fund cases, 99 U. S., 700, Mr. Chief Justice WAITE, speaking for the court (p. 721), says:

"Legislative control of the affairs of a corporation may, "however, very properly include regulations by which "suitable provision will be secured in advance for the pay- "ment of existing debts when they fall due. If a state, "under its reserved power of charter amendment, were to "provide that no dividends should be paid to stockholders "for current earnings, until some reasonable amount had "been set apart to meet maturing obligations, we think "it would not be seriously contended that such legislation "was unconstitutional, either because it impaired the obli- "gation of the charter contract, or deprived the corpora- "tion of its property without due process of law. Take

"the case of an insurance company dividing its unearned "premiums among its stockholders, without laying by "anything to meet losses, would any one doubt the power "of the state, under its reserved right of amendment, to "prohibit such dividends until a suitable fund had been "established to meet losses from outstanding risks? "Clearly not, we think, and for the obvious reason that "while stockholders are entitled to receive all dividends "that may legitimately be declared and paid out of the "current net income, their claims on the property of the "corporation are always subordinate to those of creditors. "The property of a corporation constitutes the fund from "which its debts are to be paid, and if the officers improp- "erly attempt to divert this fund from its legitimate uses, "justice requires that they should in some way be re- "strained. A court of equity would do this if called upon "in an appropriate manner; and it needs no argument to "show that a legislative regulation which requires no more "of a corporation than a court would compel it to do "without legislation, is not unreasonable. Such a regula- "tion, instead of being destructive in its character, would "be eminently conservative."

The language thus quoted, while applicable to the act of 1874, applies with peculiar force to the act of 1869, which is also challenged by plaintiff in error. That act does no more than to establish a standard of solvency, to which it requires all life insurance companies to conform, and provides certain penalties for a failure to conform to the requirements of the act. Its manifest purpose was to give to the public assurance of the prosperity and solvency of insurance companies, in which so many citizens of the state were interested. It was, therefore, but a wise and prudent exercise of the police power of the state, in regulating the business of insurance companies in such manner as to best promote the interests of the public and of the insured. We may therefore affirm of this act, what was affirmed by this court of the sinking

fund act considered in the case last cited, and in the very words of the court (page 726):

"It is sufficient now to say that we think the legislation complained of may be sustained, on the ground that it is a reasonable regulation of the administration of the affairs of a corporation, and promotive of the interests of the public and the corporators. It takes nothing from the corporation or stockholders which actually belongs to them. It oppresses no one, and inflicts no wrong. It simply gives further assurance of the continued solvency and prosperity of a corporation in which the public are so largely interested, and adds another guaranty to the permanent and lasting value of its vast amount of securities."

While this reserve power of the state over corporations of its own creation is believed to be applicable to all classes of corporations, its exercise is peculiarly appropriate in the case of life insurance companies. The charters of such companies are granted and accepted for the declared purpose of permitting the corporation to take from the industrial classes a portion of their earnings, to invest and husband them, and to return to the beneficiaries of the insured, after his death, the amount named in the policy. The beneficiary in the policy has no security for such investment, except the simple contract of the company. No one of the insured can afford to investigate carefully its condition. Thus a life insurance company is not only a trustee for its policy-holders, but its fiduciary relation is of a peculiarly sacred character, and the state is under especial obligations to protect the beneficiaries and the *cestuis que trust*, to provide for the safe investment of the funds, to establish a standard of solvency, a ratio of assets to liabilities, and to prescribe the basis for estimating the liability of the company to its policy-holders; in short, to do precisely what the State of Illinois has done by the

act of 1869. To grant charters to such companies, without such regulation and control as is necessary to protect the insured, would be a prostitution of the sovereignty of the state.

While legislation similar to the Illinois statutes of 1869 and 1874 has been adopted by most of the states of the union, all of which is virtually sought to be swept away by the writ of error in this cause, it is difficult to conceive of a case which could present in a more striking light the necessity for such legislation than the case at bar. It is hardly extravagant to assert that the Chicago Life Insurance Company was never solvent during a single hour of its existence. But ten per cent. of its capital stock was ever paid. The stock subscription notes representing the unpaid subscriptions were ingeniously made payable on demand, without interest, and no demand was ever made upon these notes by the company, so that no interest ever accrued. (Rec., 37.) The annual sworn reports of the company to the state, reported the capital stock as fully paid in cash, thus leading the public and the insured to believe that the stock was fully paid and invested in interest-bearing securities. Large dividends were annually paid to the stockholders from the earnings of the company (Rec., 72), which should have been held as a surplus as against the present value of the policy liabilities, to say nothing of death claims. Upon such collateral securities deposited by the stockholders to secure their unpaid subscriptions, as bore interest, the stockholders themselves received the interest, instead of the company to which it was rightfully due. The annual dividends paid to the stockholders as above stated were made in direct defiance of a by-law of the corporation prohibiting the payment of any dividends un-

til the capital stock should be fully paid. The annual reports to the auditor scheduled large amounts of assets and securities as the property of the corporation, which were in fact no part of its assets, but were the property of a syndicate, composed of its secretary and one Barry, having no connection with the company. (Rec., 14.) These sworn reports also falsely increased and magnified the receipts of the company, and falsely stated its disbursements. (Rec., 28–33, 71.) These annual reports, falsified in the particulars above stated, were submitted to the inspection of the stockholders at their annual meetings, before they were transmitted to the auditor, and were carefully examined by a committee of the stockholders appointed for that purpose. The last annual report, for the year closing December 31, 1876, was thus submitted to the annual meeting of the stockholders, held January 16, 1877, and referred to the finance committee for examination. This committee was composed of S. M. Nickerson, president of the First National Bank of Chicago, Godfrey Snydacker, also a prominent banker of the city, and W. F. Tucker, president of the company. The committee reported to the board of directors, February 20, 1877, that they found the annual report in full accord with the books, "and that they had taken particular care, "in the examination of the assets, as shown by the books "at the close of business on December 31, 1876." (Rec., 73 and 74.) Yet this identical report stated that the capital stock of $125,000 was fully paid in cash; that the assets of the company were $368,510.96, when six months later, upon the appointment of the receiver, the same assets were found to amount to $212,338.06; that the net surrender value or reserve due on policies in force was $264,155, when six months later, upon the appointment

of the receiver, and with no increase in such surrender value during the interval, the amount was found to be $320,013.99. (Rec., 73.) The report also included among the securities of the company, about eighty thousand dollars of mortgages, which were not the property of the company, and was falsified in various other respects, as appears from the statement of the case prefixed to this argument.

Equally glaring discrepancies between the actual and the reported condition of the company appear in the annual reports of several years prior to that of 1876. These annual reports, thus inspected each year by the finance committee, and verified by the affidavits of the president and secretary, were tabulated yearly in the form of circulars, which were distributed by the company throughout the states in which it did business, and were used as advertisements for soliciting new business.

While, under the ruling of this court in *Murdock* v. *City of Memphis*, 20 Wall., 590, we are not permitted to review these facts for the purpose of maintaining the judgment of the state court upon the merits of the controversy, it is believed that they are pertinent to the inquiry so far as may be necessary to show that there were other distinct grounds upon which the judgment of that court rested, independent of the federal question. Be this as it may, the facts concerning the actual history and condition of the company, as above narrated, afford the strongest possible demonstration of the absolute necessity of state supervision over the business of life insurance. And we submit with confidence, upon this branch of the case, that in the passage of the acts of 1869 and of 1874, the legislature of Illinois only expressed

in appropriate legislation that salutary control which every state should exercise over business of the nature under consideration, and that such legislation is a legitimate exercise of the police power of the state.

II.

The act of 1874 impairs no chartered rights of insurance companies, but only changes the form of remedy for the correction of an abuse of corporate franchises.

It will hardly be contended seriously by counsel for plaintiff in error, that the facts already narrated as to the history and transactions of the Chicago Life Insurance Company, did not constitute a gross misuser of its corporate franchise. The business for which a life insurance company receives its charter, is to take risks upon lives in consideration of premiums paid. Whenever, therefore, the condition of the company becomes such that its assets are insufficient to meet its policy liabilities, the purpose for which its franchise was granted has wholly failed. Such a case presents a clear abuse or misuser of the corporate franchise, sufficient to justify its forfeiture by proceedings at common law. As was well said by the Supreme court of Illinois, construing the statute of 1874, in *Ward* v. *Farwell*, 97 Illinois, 593:

"By the common law a misuser by a corporation of its "franchises is a cause of forfeiture, and it is difficult to "conceive of a greater abuse of a company's franchise "than to continue taking risks and accepting premiums, "when there is no probability of its ever being able to "pay its losses, and such an abuse of its franchise is a "good cause of forfeiture, independent of the statute."

The common-law remedy for enforcing the forfeiture was by *scire facias* or by proceedings in *quo warranto*. It cannot be doubted that for the flagrant abuse of the corporate franchise above narrated, an information in the nature of a *quo warranto* would have resulted in a judgment of ouster, and the resumption by the state of the rights which had been so grossly abused. The act of 1874 simply changes the forum for declaring such forfeiture from the law to the equity side of the court. In other words, it combines the legal remedy for declaring the forfeiture and resuming the franchise with the equitable remedy for administering the assets, and provides a simple method by which both objects may be obtained in one and the same proceeding. At common law upon a proceeding by *scire facias*, or in the nature of a *quo warranto* to revoke the corporate franchise, the court was powerless to distribute the assets among the creditors, and an independent proceeding in equity was still requisite for that purpose. By the act of 1874, the common-law remedy for enforcing the forfeiture, and the equitable remedy for administering the estate and distributing the assets among the creditors are blended in one and the same form of procedure upon the equity side of the court. The act of 1874, therefore, so far from impairing any contract rights, is a wise and salutary change of remedy, tending to simplify the proceedings incident to closing up the affairs of insolvent insurance companies, and to prevent a multiplicity of suits, by affording in one and the same equitable action, the relief, which before the statute, could only have been had in two independent proceedings, one at law and the other in equity.

That the legislature has absolute control over all forms of remedy, and may alter or modify existing remedies, or

blend two or more forms of remedy in one and the same action, or may change the forum and permit relief to be had in equity, which could formerly be had at law, and *vice versa*, provided always a substantial remedy remains, would seem to be too well established by the decisions of this court to admit of question. By a long and uniform course of decisions in this court, the distinction has been sharply defined between legislation which impairs the contract right and that which affects only the remedy or the forum.

As early as *Young* v. *Bank of Alexandria*, 4 Cranch., 384, Mr. Chief Justice MARSHALL, delivering the opinion of the court, upon this point says (page 397):

"There is a difference between those rights on which "the validity of the transactions of the corporation de- "pends, which must adhere to those transactions every- "where, and those peculiar remedies which may be "bestowed on it. The first are of general obligation, the "last, from their nature, can only be exercised in those "courts which the power making the grant can regu- "late."

Upon the same point, in *Bank of Columbia* v. *Oakley*, 4 Wheat., 235, the court say (page 245):

"The forms of administering justice and the duties and "powers of courts, as incident to the exercise of a branch "of sovereign power, must ever be subject to legislative "will, and the power over them is inalienable, so as to "bind subsequent legislatures."

So in *Bronson* v. *Kinzie*, 1 How., 311, the court, while holding a statute of Illinois, giving to the mortgagor twelve months to redeem from a foreclosure sale, inapplicable to a mortgage executed prior to such statute, because impairing the obligation of the contract, nevertheless affirm in the most emphatic language the abso-

lute power of the legislature to control all forms of remedy. The court, Mr. Chief Justice TANEY delivering the opinion (page 315), say:

"Undoubtedly the state may regulate at pleasure the "modes of proceeding in its courts in relation to past con- "tracts as well as future. * * * Regulations of this "description have always been considered, in every civil- "ized community, as properly belonging to the remedy, "to be exercised or not by every sovereignty, according "to its own views of policy and humanity. It must re- "side in every state to enable it to secure its citizens from "unjust and harassing litigation, and to protect them in "those pursuits which are necessary to the existence and "well being of every community. And, although a new "remedy may be deemed less convenient than the old "one, and may in some degree render the recovery of "debts more tardy and difficult, yet it will not follow that "the law is unconstitutional. Whatever belongs merely "to the remedy may be altered according to the will of "the state, provided the alteration does not impair the "obligation of the contract But if that effect is pro- "duced it is immaterial whether it is done by acting on "the remedy, or directly on the contract itself. In either "case it is prohibited by the constitution."

So, in *Tennessee* v. *Sneed*, 96 U. S., 69, Mr. Justice HUNT, delivering the opinion, after an exhaustive review of the authorities, reaffirms the doctrine in these words (page 74):

"The rule seems to be that in modes of proceeding "and of forms to enforce the contract, the legislature has "the control, and may enlarge, limit or alter them, pro- "vided that it does not deny a remedy, or so embarrass "it with conditions and restrictions as seriously to impair "the value of the right."

Again, and as late as the case of the *United States* v. *Union Pacific Railroad Company*, 98 U. S., 569 the court had occasion to review its decisions upon the same point,

and reaffirmed the doctrine of the earlier cases, establishing the right of the state by appropriate legislation, to change forms of remedy. Mr. Justice MILLER, delivering the opinion, says (page 606):

"Statutes of this character (changing the remedy), if "not so common as to be called ordinary legislation, are "yet frequent enough to justify us in saying that they are "well recognized acts of legislative power, uniformly sus-"tained by the courts. It may be said, and probably with "truth, that such statutes, when they have been held to "be valid by the courts, do not infringe the substantial "rights of property or of contract of the parties affected, "but are intended to supply defects of power in the courts, "or to give them improved methods of procedure in deal-"ing with existing rights."

This review of the decisions of this court upon the point under discussion would seem to render any extended review of the decisions of the state courts unnecessary; but the same doctrine has been so distinctly affirmed in several of the states in passing upon statutes almost identical with the Illinois act of 1874, that we may be pardoned for directing the attention of the court to those decisions.

In *Commonwealth* v. *Farmers' and Mechanics' Bank*, 21 Pick., 542, already cited, it was sought to wind up the affairs of an insolvent bank by a proceeding in equity, under an act of which, as we have already stated, the Illinois act of 1874 is almost a literal reproduction. The court say, page 551:

"Whenever either a forfeiture of charter or insolvency "are to be inquired into, there must be some mode of "judicial proceeding, some suit must be instituted. Such "mode may be properly directed by law, subject only to "the conditions that it be fair and impartial, calculated to "secure and preserve the rights of all parties to be

"affected by it. It is desirable that it should be as nearly "conformable as conveniently may be, to the course of "judicial proceedings in like cases. Such a suit may, to "a certain extent, interfere with the liberty of action, and "even with the right of property of such institution, but "this cannot be considered as going beyond the limits "which justice requires, and which the law in like cases "allows, if it extend no further than to preserve the prop- "erty until the inquiry can be had, and to secure it for a "distribution amongst creditors, stockholders and others "entitled to it in case such should be the final judgment "upon such inquiry. * * But if it is competent for "the legislature to accomplish these objects, by any mode "of judicial proceeding, it may as well be done in the "form of a bill in equity as in any other. It seems to be "a well settled rule that where the legislature have the "power to provide redress, for either a public or private "wrong, the remedy or mode of redress is wholly a sub- "ject of legislative discretion."

And in *Commercial Bank of Manchester* v. *Mississippi*, 4 Smedes & Marshall, 503, already cited, which was a proceeding under a similar statute, Mr. Chief Justice SHARKEY says (page 507):

"The legislature may vary the nature and extent of the "remedy, so that some substantive remedy be left. * * "The state also has a right to regulate the form of the "remedy, and the time and manner in which it shall be "pursued. Every charter is granted by the exercise of "the high functions of government, and contains a por- "tion of the power of the government within it. Any "abuse entitles the state to reclaim the power. * * "The state being the only power that can control the "abuse of authority by corporations, it is bound to pro- "tect the public from the influence of these abuses when- "ever they may occur."

And to the same effect is *Bank of Columbia* v. *Attorney General*, 3 Wend., 588, previously cited, which was decided under a statute closely resembling the act of 1874.

III.

The acts of 1869 and 1874 do not impair the obligation of the contracts between the Chicago Life Insurance Company and its creditors.

To the point made by counsel for plaintiff in error, that the Illinois statutes impair the obligation of the contracts entered into by the Chicago Life Insurance Company with its policy holders and other creditors, it is sufficient to say that these contracts were made subject to the right of the state to regulate the business of the company and to revoke its franchises for misuser. The obligation of these contracts remains unimpaired, and they may still be enforced out of the assets of the company, which are a trust fund for their payment.

This exact point was determined by this court in *Mumma* v. *Potomac Company*, 8 Peters, 283. In that case the charter of the Potomac Company, with all of its property, had been surrendered and transferred to the Chesapeake and Ohio Canal Company, under certain legislation of the States of Maryland and Virginia, and of the United States. It was contended that such legislation impaired the obligation of the contracts of the Potomac Company with its creditors, but Mr. Justice STORY, delivering the opinion, says (page 286):

"We are of opinion that the dissolution of the corporation, under the acts of Virginia and Maryland (even supposing the act of confirmation of Congress out of the way), cannot in any just sense be considered within the clause of the constitution of the United States on this subject, an impairing of the obligation of the contracts of the company by those states, any more than the

"death of a private person can be said to impair the obli-
"gation of his contracts. The obligation of those con-
"tracts survives, and the creditors may enforce their
"claims against any property belonging to the corpora-
"tion which has not passed into the hands of *bona fide*
"purchasers, but is still held in trust for the company or
"for the stockholders thereof, at the time of its dissolu-
"tion, in any mode permitted by the local laws. * *
"Independent of this view of the matter, it would be ex-
"tremely difficult to maintain the doctrine contended for
"by the plaintiff in error upon general principles. A
"corporation, by the very terms and nature of its political
"existence, is subject to dissolution by a surrender of its
"corporate franchises and by a forfeiture of them for
"willful misuser and non-user. Every creditor must be
"presumed to understand the nature and incidents of
"such a body politic, and to contract with reference
"to them. And it would be a doctrine new in the law
"that the existence of a private contract of the corpora-
"tion should force upon it a perpetuity of existence, con-
"trary to public policy and the nature and objects of its
"charter."

In *Greenwood* v. *Freight Company*, 105 U. S., 13, the same objection was made to an act of the legislature of Massachusetts, repealing a charter of a street railway company, under a power reserved in the general statutes of the state to repeal all acts of incorporation. Upon the point now under discussion, this court, Mr. Justice MILLER delivering the opinion, say (page 19):

"Personal and real property acquired by the company
"during its lawful existence, rights of contract or choses
"in action so acquired, and which do not in their nature
"depend upon the general powers conferred by the char-
"ter, are not destroyed by such a repeal; and the courts
"may, if the legislature does not provide some special
"remedy, enforce such rights by the means within their
"power. The rights of the shareholders of such a cor-
"poration to their interest in its property are not annihi-
"lated by such a repeal, and there must remain in the
"courts the power to protect those rights."

IV.

The Amendment to the charter of the plaintiff in error expressly makes it subject to the operation of all general laws thereafter enacted by the General Assembly of Illinois on the subject of life insurance, and such laws are as valid and binding upon it as if the same were a part of its original charter.

Section 4 of the charter of the Travelers Insurance Company provides as follows:

"The business of said corporation shall be the insuring "of persons against the accidental loss of life or personal "injury sustained while travelling by railways, steamers "and other modes of conveyance in the United States and "other countries; and contracts of insurance may be "made on such terms and conditions and for such periods "of time, and confined to such persons as shall be from "time to time ordered and provided for by the by-laws of "said corporation." (Rec., 100.)

It is true that section one of this act created a body politic and corporate for the purpose of insuring persons against the accidental loss of life or personal injury while traveling by railway, steamboat or other mode of conveyance, "and such other kinds of insurance as the direc- "tors of the corporation should deem expedient," but no specific reference is made in the act to life insurance, and it is clear that the company was created especially for the purpose of carrying on a peculiar kind of accident insurance. (Rec., 100.) Indeed it is very questionable whether the company could lawfully have transacted the business of insurance of any other kind than that specific-

ally set forth in section 4 of its charter. If it could have done so at all, the powers of the company would certainly have been extremely limited in that regard. When therefore it concluded to abandon the business of accident insurance and engage in that of life insurance, there was ample reason why it should seek from the legislature a grant of new and enlarged powers such as were contained in the amendment to its charter. (Rec., 102–3.) For the Travelers Insurance Company under the provisions of its charter to have undertaken to transact the business of life insurance would have been utter folly. Clearly it was desirable not only that the name of the company should be changed, but it was exceedingly important, if not absolutely necessary, that the charter of the company should confer upon it specifically the right to transact the business of life insurance, and should also grant to it new and enlarged franchises. It is conceded that the original charter of the Travelers Insurance Company contains no reservation on the part of the legislature to alter or amend the same, nor was there at that time any general law in force in Illinois in terms reserving such right. Until the adoption of the amendment the legislature could have amended or altered the charter of the company only in so far as the right to do so was reserved by implication. When the company, however, desired to abandon the business of accident and embark in that of life insurance, and sought a new grant for that purpose, the legislature had not only the right but it was its duty to make such specific reservation as would protect the public against any possible injury from the exercise of the powers conferred upon the company by its charter. This amendment was adopted in 1867, and the general insurance law of Illinois was enacted in 1869. The necessity of general

laws regulating and controlling life insurance companies was already becoming apparent. Under these circumstances, the intent of the legislature in enacting section 5 of the amendment to the charter is manifest. This corporation, created by a former legislature for another purpose, sought permission of the legislature of 1867, to transact the business of life insurance, and wished for special privileges in relation thereto; to which request the legislature in effect replied: "You desire a new grant of "power and new privileges to enable you to enter upon "the business of life insurance, not specifically authorized "by your charter; you shall receive the powers and privileges desired, but upon this express condition: that "neither this act nor your original charter shall exempt "your from the operation of any general law hereafter to "be enacted by the general assembly on the subject of "life insurance, which you now, for the first time, propose "to carry on; that is, you shall be expressly subject to all "such laws." This is precisely the meaning and intent of section 5 of the amendment to the charter, and by the acceptance of this amendment the company solemnly contracted with the state that it would be subject to all such general laws. That this was the intent of the law and of the company, the conduct of the company proves beyond question. Immediately after the adoption of the law of 1869, regulating the business of life insurance, and requiring all life insurance companies to make a detailed statement as to their assets, their liabilities, their policy contracts, and all other particulars necessary to a clear understanding of their financial condition, and requiring such reports to be verified by the oath of the president and secretary, providing for examinations by the auditor, and establishing the basis of solvency for life insurance

companies, plaintiff in error hastened to conform to all the provisions of the law. This willing submission to all the provisions of the law of 1869, was a construction by the company itself of its original charter contract as modified by the amendment of 1867, and was a submission to the law and all its requirements and provisions, and an admission that the law was part of its charter contract. Counsel for plaintiff in error in his extraordinary attempts to escape from the logic of this position, is forced to adopt a theory contrary to reason and law, and confessedly without precedent. It is said by counsel that a fair and just effect will be given to the words of this statute by holding that the company is subject to all such general laws and regulations, provided they do not impair substantial contract rights of the corporation under its contract with the state, on the faith of which it embarked in business, and to establish which it expended a large sum of money and a large amount of time and toil. Just what the learned counsel means by this language, it is difficult to conceive. Does he mean that the company is subject to the general laws touching life insurance, precisely to the same extent as it would have been without the provisions of the fifth section of the amendment to the charter? If so, then the fifth section is a mere nullity. If subject to any further or other provisions by virtue of this amendment, then to what extent and to what provisions is it so made subject? The learned counsel apparently contends that any general law of Illinois on the subject of life insurance might bind the company, if not in conflict with the terms of the original or amended charter, not giving any effect or meaning whatever to the provisions of section 5 of the amendment. In other words, he seems to claim that all of the original

and amended charter is operative as a contract, except section 5, which singularly enough, does not seem, in his estimation, to constitute a part of the charter contract. On the contrary, it is clear that if there be a conflict between the general law and any provisions of the charter, the latter must yield and the former stand supreme, for section 5 says, in clear and unmistakable words: "*This "act and the act to which this is an amendment shall not "be deemed to exempt said company from the operation of "such general laws as may be hereafter enacted by the gen-"eral assembly, on the subject of life insurance.*"

If there be any meaning in language, and if this section is not an unintelligible absurdity, then its meaning is simply this: The Chicago Life Insurance Company shall be subject to all general laws hereafter enacted by the general assembly on the subject of life insurance; and whenever such general laws shall be in conflict with the provisions of this act, or of the act to which this is an amendment, then such laws shall prevail over any provisions of the charter. The effect of section 5 is to make every such general law when enacted a part of the charter contract itself, and as binding upon the company as if the charter itself had originally contained *in hæc verba* the provisions of such law. It follows then that the company having accepted the amendment to its charter, and having proceeded to transact business pursuant to the provisions of such amended charter, section 5 becomes a part of its charter contract, and by virtue thereof the company is estopped from asserting the invalidity or unconstitutionality of any general law of Illinois touching the subject of life insurance. Under such circumstances to permit plaintiff in error to insist that the general law is unconstitutional and invalid, is in effect to permit a company having re-

ceived a charter and transacted business by virtue of its provisions, to deny the validity of the instrument by which it was created. For if the company claim exemption from the operation of the general insurance laws of Illinois it must do so by virtue of its charter contract, and this is precisely what it has contracted by its charter not to do.

The authorities quoted by counsel for plaintiff in error are wholly inapplicable to the question in issue. So far as the effect of this amendment is concerned, the question is not what the general reserved powers of the state are, but whether a company having by its charter, for a good consideration, and by a provision therein contained, clearly and unmistakably contracted to submit itself to certain general laws, either *in esse* or *in posse*, shall be permitted to refuse obedience to such laws when enacted, or assert them to be invalid and unconstitutional.

Counsel for plaintiff in error, apparently forgetful of the facts, intimates that the company had expended a large amount of money, time and toil in establishing a business under a charter, the substantial rights of which were subsequently impaired by legislative action. The facts warrant no such statement. If the company had not seen fit to submit to the amendment subjecting it to general laws thereafter passed, and had declined to do so, it might have insisted upon its original charter rights whatever they were. It was, however, willing and anxious to accept and did accept the amendment on the conditions therein prescribed. All the business of life insurance transacted by the plaintiff in error was transacted after its acceptance of the amendment. Every policy contract made by it was entered into under and by virtue of the charter as amended, whereby it agreed to be subject to

all such general laws. It is then little less than absurd to claim that any contract rights were or could be impaired by any general law which is thus made by the terms of the charter itself a part of the instrument by which the body corporate was created.

To sustain his theory of the limitations upon the power of a legislature to alter or amend a charter when the power to do so has been specifically reserved, counsel quotes a sentence from the Sinking Fund cases as follows:

"That the power to alter or amend has a limit no one "can doubt. All agree that it cannot be used to take "away property already acquired under the operation of "the charter, or to deprive the corporation of the fruits "actually reduced to possession of contracts lawfully "made."

It is unfortunate that the attention of counsel should have been diverted from the remainder of the sentence and paragraph which reads as follows:

"But as was said by this court through Mr. Justice "CLIFFORD, in *Miller* v. *The State*, (15 Wall., 498), 'it "may safely be affirmed that the reserved power may be "exercised, and to almost any extent, to carry into effect "the original purposes of the grant, or to secure the due "administration of its affairs, so as to protect the rights "of stockholders and of creditors and for the proper dis-"tribution of its assets'; and again in *Holyoke Company* "v. *Lyman* (15 Wall., 519): 'To protect the rights of the "public and of the corporators, or to promote the due ad-"ministration of the affairs of the corporation.' Mr. Jus-"tice FIELD, also speaking for the court, was even more "explicit, when in *Tomlinson* v. *Jessup* (15 Wall., 459), "he said: 'The reservation affects the entire relation be-"tween the state and the corporation, and places under "legislative control all rights, privileges and immunities "derived by its charter directly from the state.' And "again as late as *Railroad Company* v. *Maine* (96 U. S., "510), 'By the reservation * * * the state retained

"the power to alter it (the charter) in all particulars con-
"stituting the grant to the new company formed under
"it, of corporate rights, privileges and immunities.' Mr.
"Justice SWAYNE, in *Shields* v. *Ohio* (95 U. S., 324),
"says by way of limitation: 'The alterations must be
"reasonable; they must be made in good faith and be
"consistent with the object and scope of the act of incor-
"poration. Sheer oppression and wrong cannot be in-
"flicted under the guise of amendment or alteration.'
"The rules as here laid down are fully sustained by
"authority."

As we have already seen, the law of 1869 regulating the transaction of the business of life insurance is a proper and legitimate exercise of legislative functions and does not impair the obligation of the charter contract even where no power to alter or amend has been reserved. Similar laws have been enacted by the legislatures of nearly all of the states of the Union, and have been held constitutional and valid by every court of last resort in which they have been construed. To question their validity or constitutionality at this time is a task so utterly hopeless that few lawyers would venture to undertake it.

The law of 1874 regarding the dissolution of insurance companies is neither oppressive, arbitrary nor unreasonable; on the contrary, it is a legitimate exercise of the sovereign power of the state of which no honestly conducted corporation was ever heard to complain, and none reeking with fraud, dishonor and perjury can be heard to complain. Formerly the state itself might have proceeded by a special act to deal with the affairs of a corporation which had ceased to fulfill the object for which it was created, and whose franchises were liable to forfeiture, and in the interests of the public whose rights had been trampled upon might resume its affronted sovereignty.

By the law of 1874 a method is provided by which insurance companies incorporated under the laws of Illinois may, when they have become dangerous to the community, insolvent, or have exceeded their corporate powers, be prevented from further extortion, mismanagement and abuse, and their assets may be marshaled and distributed by the court. This law when invoked in the interest of policy holders to secure the marshaling and distributing of the assets of an insolvent company whose condition is dangerous to the public may fairly be said to be: "designed to secure the due administration of its "affairs and to protect the rights of stockholders and of "creditors, and for the proper distribution of its assets." The powers granted, and the proceedings authorized under the law of 1874 are unquestionably valid and constitutional under the doctrine enunciated in the Sinking Fund cases just cited, and *Spring Valley Water Works* v. *Schottler*, 110 U. S., 348.

Counsel for plaintiff in error seems to hold that the peculiar language employed in section 5 of the amendment to the charter, namely: "This act and the act to "which this is an amendment *shall not be deemed to ex-* "*empt* the company from the operation of such general "laws as may hereafter be enacted by the general as- "sembly on the subject of life insurance," being negative in form means something different from and less than an affirmative statement that the company should be subject to all such general laws. As we have already seen, it means precisely this or it has no meaning whatever. But if there were ever any doubt as to the legal effect of such a form of reservation, there has been none since the decision by this court in the Pennsylvania College cases,

13 Wall., 190. The reservation to the state of the power to amend, alter or modify the charter in that case was negative in form. It was there provided that the constitution of the college should not be altered or alterable by any ordinance or law of the trustees, "nor in "any other manner than by an act of the legislature of "the commonwealth." This court, in construing that form of reservation to the state, says that by necessary implication it reserves to the state the power to alter or amend the charter without any prescribed limitation; and that it is in all respects equivalent to an express reservation to make any alteration in the charter which the legislature in its wisdom may deem fit, just and expedient to enact. The case at bar is certainly much stronger, and the language employed much clearer and less open to cavil than that employed in the Pennsylvania College cases, and the question can no longer be open to argument in this court.

The plaintiff in error is then by its own solemn act of accepting the amendment to its charter and by its own cotemporaneous construction thereof forever estopped from claiming any such general law to be unconstitutional, invalid, or in contravention of the terms or spirit of its original charter. It cannot be heard to object to the method of ascertaining the net present value of its policies and thereby establishing the standard of its solvency; or to the statutes regulating and controlling its affairs; or to the jurisdiction of the court; or to the method of procedure under the act of 1874; or that the causes specified in such act for the dissolution thereof were not sufficient, since by the operation of section 5 all these laws become in effect a part of the charter contract and

essential elements of the very instrument by virtue of which it was created and received power to perform the functions and to exercise the franchises of a life insurance company.

V.

Plaintiff in error, by its acts in connection with the appointment of a receiver in this cause, its voluntary surrender of its assets to him, its permitting such receiver without objection or protest to marshal and distribute its assets and administer its estate for nearly four years without a motion to dissolve the injunction or to discharge the receiver, is estopped from questioning the validity and constitutionality of the law under which the petition was filed, and its acts and acquiescence are a complete waiver of all its constitutional rights and a total abandonment and surrender of its charter and franchises.

While counsel for defendant in error are confident that the court will affirm the decision of the Supreme court of Illinois on the ground that the insurance laws of Illinois do not impair the obligation of the charter contract of plaintiff in error, still we deem it proper to call the attention of the court to the peculiar facts and circumstances surrounding the commencement of these proceedings, and attending the administration of the estate by its receiver. These facts and circumstances are of such an extraordinary character that even if the act of 1874 were invalid and unconstitutional, yet the judgment of the Supreme court of Illinois should be affirmed, and counsel earnestly invoke the judgment of this court as to whether

the conduct of the plaintiff in error in the premises is not a complete waiver of any right to question the constitutionality of such act, and a complete abandonment and surrender of its charter and franchises.

The law is well settled that parties to a suit may by express stipulation or by implication waive any rights, legal, equitable or constitutional, which otherwise they would be entitled to assert. Parties to a suit by their conduct in respect to their pleadings, either in what they allege in them, or fail to allege in them, or by their acts in respect to the subject matter of litigation may, and often do, as effectually waive rights to which they are absolutely entitled as could be done by the most clear, explicit and binding stipulation in the case. It is also well established that a party to a suit may estop himself from asserting or claiming that a statute or ordinance is invalid or unconstitutional when it is confessedly so. Courts have expressly decided that a statute was wholly illegal and unconstitutional, and in the same case have held that a party to the suit could not be permitted to assert or claim such illegality or unconstitutionality because he was estopped therefrom by his acts in connection with the subject matter of the litigation, or by some act during the progress of the cause. Especially do courts of equity require that a party to a suit shall be consistent in his conduct, in his pleading and in his attitude towards the subject-matter of the litigation; that he shall not attempt to use the court for sinister purposes; that he shall not shift his position and assume contradictory attitudes during the progress of the cause, and that he shall act towards the court and towards the other party litigant with candor and good faith. This rule is founded in reason, and is absolutely necessary to prevent courts from becoming the arena

wherein ingenious devices and astute trickery shall prevail over honesty, integrity and right. It is also well settled that a corporation may either expressly or by implication abandon its rights under its charter, and may be estopped from asserting that a proceeding instituted to dissolve the corporation is commenced or prosecuted under an act which is unconstitutional, and this doctrine is also founded in reason, equity and common sense. Such acts of abandonment and such estoppel may arise by implication as well as by express stipulation in the case, or by reason of the deliberate act of the corporation itself duly expressed according to the strictest forms of law.

Cooley Const. Lim., 181.
Baker v. *Braman*, 6 Hill, 47.
Embury v. *Connor*, 3 N. Y., 511.
Savage v. *Walsh*, 26 Ala., 619.
Ferguson v. *Landram*, 5 Bush. (Ky.), 230.
McCarthy v. *Lavasche*, 89 Ill., 273.
Ransom v. *New York*, 4 Blatchf., 157.
Post v. *Dorr*, 4 Edwards Chy., 412.
Railway v. *McCarthy*, 96 U. S., 258.

In Cooley's Constitutional Limitations, page 181, it is said:

"Where a constitutional provision is designed for the "protection solely of the property rights of the citizen, it "is competent for him to waive the protection and to con- "sent to such action as would be invalid, if taken against "his will."

In the case of *Ransom* v. *New York*, 4 Blatchford, 157, the court say:

"A waiver may be either expressed or implied. An im- "plied waiver growing out of the circumstances of the

"case and the conduct of the parties and their attorneys "in the cause may be as effectual as an express waiver."

In *Railway* v. *McCarthy*, 96 U. S., 258, the court say:

"This point was an afterthought suggested by the "pressure and exigencies of the case. Where a party "gives a reason for his conduct and decision touching "anything involved in the controversy, he cannot after "litigation has begun change his ground and put his "conduct upon another and different consideration. He "is not permitted thus to mend his hold. He is estopped "from doing it by a settled principle of law."

In *Wilmington Star Mining Company* v. *Allen*, 93 Ill., 288, the court had in its custody, and was in the administration of the estate of an insolvent corporation, over which it had appointed a receiver. The property of the corporation was the lease of a coal mine. The lessor had proposed, under the sanction of the court, to test his right to a forfeiture of the lease, and for that purpose had served due notice; but the proceedings were stayed by injunction, which was afterwards dissolved by the court. The lessor was then informed by the attorney of the corporation and receiver, that no appeal would be taken, and that he could take possession of the mine, which he did, and leased the same to another party who made considerable expenditures in fitting up the same for operation. Afterwards the receiver moved for an order for a surrender of the estate to him as receiver, and to be restored to the rights and privileges held by him by virtue of the lease.

The court say:

"Allen in his bill had proposed under the sanction of "the court to prosecute proceedings to test his right of "forfeiture under his lease. For this purpose due notice "had been served. But his proceedings were stayed by "injunction granted upon the cross-bill of the company

"and the receiver. Upon the dissolution of this injunc-
"tion as appears by sworn answer uncontradicted, Allen
"was soon after expressly informed by a message from
"the attorney of the company, as well as the receiver,
"that no appeal would be prosecuted, that on the follow-
"ing Monday he, Allen, might proceed to take possession
"of the premises. He accordingly did so, and made a
"new lease of the premises to lessees, who proceeded
"thereunder and refitted the mine and resumed opera-
"tions, making a large expenditure of money in so doing.
"After this abandonment of the lease, and surrender of
"possession, and such action had on the faith thereof, it
"would be highly inequitable to retract what was a vir-
"tual surrender of the lease, and there should be an es-
"toppel to do so."

In *Post* v. *Dorr*, 4 Edwards' Chancery, 412, a receiver was appointed to take the rents and profits of the mortgaged premises, on account of the insolvency and subsequent bankruptcy of the mortgagor after a sale, and the realizing of an insufficient amount to satisfy what was due complainants. When the bill was filed an injunction was allowed against the mortgagor then applying in bankruptcy, and against the general assignee in bankruptcy, and on a supplemental bill being filed a receiver was appointed, which was opposed by the general assignee, the mortgagee's rights having been sold by such assignee. The question was as to whom the rents in the hands of the receiver should go, whether (1) to the mortgagor; (2) the general assignee; (3) or the buyer from him of the mortgagor's rights. The vice-chancellor says:

"It is too late to raise an objection against the granting
"of an injunction and the appointment of the receiver of
"the rent. If any well founded objection existed to either,
"it should have been made on motion to dissolve the in-
"junction, or in opposition to the receivership at the time
"it was applied for. Submitting to the appointment of a
"receiver by those who were before the court and had a

"right to object, and who could have appealed from the "order if dissatisfied with it, but did not, is such an ac- "quiescence in the order as renders it the law of the case, "with respect to the right to have a receiver, and that "right being established, the application of the funds must "follow so as to accomplish the object intended. Thus, "in the case in hand, the original bill of complaint was "deemed sufficient to entitle them to a preliminary in- "junction, restraining the mortgagor, Dorr, and his as- "signee in bankruptcy from collecting the rents of the "mortgaged premises, then about to become due, and "those subsequently to accrue, and on the filing of the "supplemental bill in the case it was also deemed a proper "case for the appointment of a receiver to take and collect "the rents, and an order was made accordingly. All this "proceeded on the ground of the mortgagor's bankruptcy "and an apprehended deficiency from a sale of the prop- "erty to satisfy the mortgage debt. It was with a view "to provide against such contingency that the rents were "intercepted and placed in the hands of a receiver. The "mortgagor and the general assignee in bankruptcy, in "whom the equity of redemption, or, in other words, the "legal estate had become vested, were parties to the suit, "and they were bound by the provisions of the order of "May 23, 1843" (being the order for the appointment of a receiver).

Applying the doctrines laid down in these cases and numerous others to the same effect to the facts in this case, it is clear that the plaintiff in error is estopped by its own conduct from claiming that the insurance laws of Illinois are invalid and unconstitutional.

Shortly before the filing of his petition the auditor of Illinois caused an examination to be made of the affairs of the plaintiff in error. By such examination it was found that the company had been doing a losing business for several years; that its income was small and decreasing; that large annual dividends had been paid to the stock-

holders, not warranted by the condition of the company; that the last annual statement to the auditor had included $79,000 of assets which did not belong to the company; that when the examiner was ready to trace the assets through the cash to see whether the company actually owned the assets which it claimed, the secretary of the company suddenly disappeared; that the value of the assets of the company was $196,685, and the liabilities $344,857, including the net present value of its policies on the four per cent. basis, leaving an impairment of $148,171.58; that the company was insolvent within the meaning of the statute, and the examiner recommended that proceedings should be taken to wind up the affairs of the company. (Rec., 4 6.) This statement of the examiner was true, but not the whole truth, for the condition of the company and its management were much worse than was set forth in the examiner's report. It was shown upon the hearing of the case that from 1871 to 1876 the sworn annual reports made to the auditor, pursuant to law, were false and fraudulent (Rec., 28, 71, 75); that the capital stock of the company, amounting to $125,000, was not fully paid up in cash, as was in such report stated; that a large amount of securities had been scheduled in its reports as the property of the company which it did not own in whole or in part; that such securities so falsely scheduled amounted in the year 1873 to $7,000, in 1874 to $21,500, in 1875 to $76,500, and in 1876 to $89,422 (Rec., 75); that the receipts of the company, as shown by its books, varied largely from its receipts as shown in its sworn reports to the auditor; that from 1871 to 1876 this discrepancy ranged from $9,000 to $30,000 per annum; that the total receipts of the company for these years, as shown

by the sworn reports to the auditor, was $1,022,529.75, and the same as shown by the books of the company was $927,523.29; that the officers of the company thus made oath to receiving $95,006.46 more than the actual receipts as shown by the books of the company (Rec., 71); that a like discrepancy existed in the disbursements of the company between the company's books and the sworn reports to the auditor; that from 1871 to 1876 such disbursements, as shown by the books of the company, were $839,627, and as shown by the sworn reports to the auditor, they were $856,074.41, thus showing the expenditures of the company as reported to the auditor to be $16,446.44 more than they actually were (Rec., 71); that the stockholders of the company, having paid ten per cent. of their subscriptions for stock in cash and given their demand notes for the residue without interest, the payment of which was never demanded, and no interest on which was ever paid to the company, began to draw dividends declared by the company, and that such dividends were drawn from 1871 to 1877, and amounted to $55,045, or five times the amount which the stockholders had paid in cash upon their stock subscriptions, and this, too, in direct violation of article 19 of the by-laws of the company (Rec., 28); in short, that the company from its inception had been honeycombed with fraud and reeking with perjury, and that false statements regarding its business, assets, condition and liabilities had been published and scattered and business obtained on the strength thereof (Rec., 45); that all these crimes and frauds had been committed by the secretary, or under his direction, and that an examination of the books of the company by any of the officers or directors would have disclosed the exact condition of affairs; that such examination was

not difficult, and could have been made by any ordinary business man (Rec., 22, 55-61), but none ever was made by any director (Rec., 44, 46, 51); notwithstanding this the finance committee of the board of directors had from time to time up to a short time before the examination by the auditor officially declared the company to be in a sound, healthy and prosperous condition (Rec., 73-74), although as a matter of fact such committee made no examination whatever. (Rec., 44, 51.)

Before the completion of the examiner's report the facts in regard to the condition and affairs of the company, and the flight of its secretary were published in the daily papers of Chicago (Rec., 75, 76, 77), and the board of directors became advised of the facts, as disclosed by the examination, and being so advised, several meetings of the directors were held at the office of the company to consider the situation, and the auditor was asked to defer proceedings and allow the company to wind up its own affairs, which he declined, on the ground that it was his plain duty to file a petition and ask for the appointment of a receiver. This the company well understood, and on the fifth day of July, 1877, two days before the filing of the petition in this case, knowing that the auditor deemed it his duty to file his petition praying for an injunction and for a receiver to marshal and distribute the assets of the company and to wind up its affairs, the board of directors of the company, anticipating the inevitable result, proceeded to take formal action respecting the appointment of a receiver, and thereupon the following motion was adopted (Rec., 74):

"*Resolved*, that Daniel Goodwin, Jr., be recommended "to the court as the choice of this board for the position "of receiver;" and also, "that if Daniel Goodwin, Jr.,

"be not appointed by the court as receiver that George "M. Bogue be the second choice of the board for that "position." (Rec., 74.)

On the morning of the second day after this action of the board of directors the auditor filed his petition, setting forth that he had made an examination of the company and that such examination appeared, by the report of the examiner, which was made part of the petition; that the company was insolvent and in a condition hazardous to the insured therein, and praying for an injunction and for the appointment of a receiver. (Rec., 3 to 7.) The company appeared in court by its solicitor, and in open court asked that Daniel Goodwin, Jr., one of its stockholders and its former solicitor, be appointed receiver, and his appointment being refused by the court, on account of his relations to the company, it then assented in open court to the appointment of George M. Bogue as the company's second choice for receiver, pursuant to the action of the board of directors. (Rec., 74.)

There can be no doubt that the adoption of this resolution was a deliberate act of the board. It was a complete, absolute, unqualified assent, not only to the appointment of a receiver in this cause, but to the jurisdiction of the court. And taken in connection with the order appointing the receiver, it must be held to be an assent to an immediate appointment of such receiver.

Had the board then intended to resist the appointment of a receiver, or to contest the validity of the law under which it knew proceedings were to be commenced, it would not have passed this resolution. Its learned and able counsel now appearing, was present at this meeting advising it. Why was he not instructed to oppose the

appointment of a receiver? If they believed the company solvent, and that no case would lie against it, why submit with such graceful acquiescence? Mr. Goodwin, named as the first choice for receiver, was a stockholder and the former solicitor of the company, and their desire for his appointment was entirely natural. They would, of course, have preferred to have a friend at court—one who could feel for their misfortunes, because they were his own, and who shared in their liabilities. But if the court, as the record plainly shows, should be of the opinion that the reasons why they desired his appointment disqualified him for the position, in that case, say the board, we respectfully ask the appointment of George M. Bogue. No opposition was made to the proceedings by counsel, or to the appointment of a receiver, and it is a fact to which the attention of counsel is particularly called, and which he is challenged to deny if incorrectly stated, that the only discussion in court on the 7th day of July, 1877, on any matter whatever, was as to who should be the receiver. And further, that counsel for the company proposed the appointment of Daniel Goodwin, Jr., and that counsel for the auditor proposed George M. Bogue, who was appointed.

That the proceedings of the board of directors were intended as a full and complete submission to the jurisdiction of the court and assent to the appointment of a receiver, is confirmed by the petition filed thirteen days after such appointment by the company, wherein it does not deny or protest against the jurisdiction of the court or the appointment of the receiver, or intimate the slightest dissent therefrom in any particular, but clearly assents thereto by reciting the filing of the auditor's petition, and the proposition to re-insure pending at the time, that

such proposition had not been withdrawn, but could be carried into effect "with the approval of the court;" and further reciting, in terms, that:

"*The company, on the completion of the auditor's "examination, suspended business, placed their securities "in safe keeping, and surrendered them to the receiver "on his appointment, and do not intend or desire to "transact any new business: that it is important that "the company be allowed to act concurrently with the "receiver, under the direction of the court, in closing "up the affairs of the company: and that it have the "assistance of the secretary pro tem. and its counsel, in "order that the business of the company and the winding "up of its concerns may not be wholly left to the manage-"ment of persons hitherto unacquainted with its affairs.*

"Wherefore the petitioning company prays for leave to "negotiate with the National Life Insurance Company, "or any other party for such an arrangement as set forth, "*but not to be carried out without the approval of the court "when perfected:* that the company might have leave to "continue the services of their secretary and counsel in "this behalf, to act concurrently with such receiver in "the settlement of the affairs of the company, their pro-"per compensation to be allowed by the court and paid "out of the assets of said company in due course of "administration."

If this petition of the company filed on due deliberation is not a full and complete assent to and acquiescence in the jurisdiction of the court, and a deliberate ratification of the appointment of George M. Bogue as receiver, it is not perceived how such acquiescence, assent and ratification could be made. Moreover, it is in full harmony with the action of the board of directors already recited, and forever estops the company from objecting not only to what had been done theretofore, but to the continued administration of the company's estate under the direction of the court.

It is true, the answer of the company does not in terms admit the truth of the petition, except that Clapp, the secretary, had run away, but avers:

"But whether said company, under the management "of said Clapp, has for some years last past been doing a "losing business, and whether there is a large deficiency "of the securities of said company, and whether said com- "pany is insolvent, as is in substance alleged in said peti- "tion, these respondents do not know, except as they are "informed by the report of the examiner, and therefore "cannot otherwise either admit or deny the same; but to "protect all the rights and interests that may be involved, "these respondents deny the truth of the charges afore- "said, and each of them, and put the auditor to show "proof thereof, to the end that whatever action may be "had or taken upon the affairs of said company, under "the petition of said auditor, may be based upon the "judgment of this honorable court, upon the facts of the "case duly established by lawful evidence, and not upon "any confession or consent of these respondents."

The confession of the respondents that they cannot deny the averments of the auditor's petition is frank, and the assertion that they have no knowledge as to their truth or falsity is somewhat refreshing, under the circumstances; and their preference to have the judgment of the court based upon evidence, and not upon their confession or consent, is significant. Translated into plain blunt Saxon, this answer means: It is all true, and we cannot deny it, but it is humiliating; we don't want to confess it of record; and, as a matter of form, you must prove it; and thus read between the lines, this is entirely consistent with the petition filed the same day, to which we have already referred.

The answer goes on to recite the project for reinsurance, the auditor's refusal, the filing of such petition, and

that they would ask leave of court to carry out such plan under its directions in said cause.

The answer further recites that the

"Order appointing said receiver and granting such "injunction ought to be so modified as to allow the said "company, *under the direction* of this honorable court, to "endeavor to wind up its own affairs in conformity to "law, * * * as will be more fully shown and set "forth in the petition to be filed by these repondents."

And instead of praying that the petition be dismissed at plaintiff's costs, and the receiver ordered to reconvey and redeliver its assets, as it would have done if hostile to the proceedings, it mildly and significantly prays:

"That such proceedings may be had in the premises "as justice and the law of the land may require, etc."

It is evident that, by the terms of this answer, taken in connection with the petition, filed the same day, and to which reference is made in the answer as an explanation thereof, that the company did not wish the receiver discharged or the cause dismissed, but only desired, if possible, to persuade the court to permit the company and the receiver to proceed concurrently in the premises.

The court having denied the petition of the company, it gracefully subsided, never having moved the court for the dissolution of the injunction or for the discharge of the receiver; never having resisted any of his acts, but on the contrary, impliedly and necessarily assenting to his administration, to his possession and control of its assets, and the litigation regarding the same. It stood by and permitted the court without objection to change its contingent liability on its policies into a much smaller present indebtedness, and through its receiver to pay out its

money by way of dividends to its policy-holders, and generally to carry on the proceedings to wind up its affairs, to marshal and distribute its assets, and all this without a single word of protest, but by necessary implication assenting at every step. It is difficult to conceive of a stronger case of waiver and consequent estoppel.

There is no doctrine better established than that a corporation may expressly, or by acts *in pais* abandon and surrender its charter and franchises so effectually and to such an extent that it will not be permitted to resume the same, or to exercise any rights or powers by virtue thereof. And this surrender and abandonment extinguishes the corporate life as fully and completely as a decree of dissolution or a judgment of ouster entered by a court of competent jurisdiction.

Corporate grants are made by the state for a definite and fixed purpose, and the right to corporate life depends upon the exercise of corporate functions and franchises, and when it appears that those charged with the administration of the corporate affairs have fully ceased exercising the functions for which the corporation was created, or when the corporation has become absolutely unable to discharge these functions, or when, as in this case, it goes into court, confesses its insolvency and inability to continue its business, and consents that all its property and contract rights shall be taken from it, and its assets marshaled and distributed, then it must be held that the corporate rights and franchises have been deliberately surrendered and abandoned.

In *Moore* v. *Whitcomb*, 48 Mo., 543, the court say:

"Upon the whole, we are disposed to hold in accord-
"ance with the decision in *Slee* v. *Bloom*, that the facts

"alleged in the petition sufficiently show a dissolution of "the corporation by a practical surrender and abandon- "ment of its corporate rights and franchises."

In the case last referred to, among the allegations of the petition it was alleged that the franchises of the corporation had been sold; that the corporation had failed to complete its road; that the same was unfinished and abandoned; that the corporation had not kept up or maintained its corporate existence, and had not held a legal election of officers since 1860.

In the case of *People* v. *Directors, &c.*, 6 Cowen, 216, the court say:

"There is one fact alleged which, if well pleaded, will "sustain the prosecution. It is this: That the defend- "ants assigned and transferred so much of their property "to trustees as to render themselves incapable of contin- "uing their banking operations. This fact, if conceded, "presents a case falling within the general principles laid "down in *Slee* v. *Bloom*, that the suffering an act to be "done which destroys the end and object for which the "corporation was instituted, must be regarded as equiva- "lent to a surrender."

In *Mississippi* v. *Bank*, 13 S. & M., 569, where the question before the court was whether, where a bank makes an assignment, such assignment is a forfeiture of the charter, the court say:

"We have already stated that the simple act of assign- "ment was not a misuser of the charter privileges. It "could not be a non-user, because it was an exercise of a "corporate franchise. It might, however, place the bank "in a situation which would end in the non-user for the "want of means with which to carry on its affairs."

In *State* v. *Bank*, 5 Ark., 595, a corporation had made

an assignment, and the question was whether such assignment was a forfeiture of the charter. The court say:

"The grant of the state was made to the stockholders "for the valuable consideration and upon the implied con- "dition that they would continue to exercise and perform "the duties and obligations imposed by the charter. * * *

"Now, it is perfectly manifest, upon principles of public "policy, of reason and natural justice, that the violation of "this implied condition necessarily dissolves the considera- "tion of the contract. The effect of failing to perform "her part of the agreement is to discharge the state from "the continuance of the grant, and it not only becomes "her right, but it is her duty to resume it. Her faith and "honor are pledged to protect the corporation in the "enjoyment and full exercise of all its privileges and im- "munities, * * so long as the corporation has the "will and possesses the power of discharging both her "public and private engagements. This she unquestion- "ably cannot do, if by her own voluntary act or deed the "assignment has divested her of all her corporate capaci- "ties: for if she be *civiliter mortuus*, how can it be said that "her legal personage still lives, and that she has the power "of perpetual succession? By such an act, all her rights, "privileges and liberties have passed from the control and "management of the corporation, and being stripped of "all her power and authority, she ceases to exist. * * * "Suffering any act to be done which destroys the end and "object for which the corporation is instituted, is equiv- "alent to a direct surrender of its charter."

In the case of *Slee* v. *Bloom*, 19 Johnson, *456, pursuant to a statute relative to corporations for manufacturing purposes, respondents associated together and became a corporation for the period of twenty years. After December, 1817, there was no meeting of the trustees, nor any business nor act done by the corporation, and on the first of February, 1818, all the property of the corporation, real and personal, was sold by a sheriff under an execution. Slee filed his bill against respondents as individuals, under

the act referred to, alleging that the corporation was to be considered as dissolved after the first of February, 1818. In this case the court say:

"In coming to the conclusion that the corporation in "this case is dissolved, I lay out of the case everything of "mis-user or non-user, excepting the influence which the "fact of non-user may have as evidence connected with "other facts to show the renunciation of the corporate "rights. Upon the authorities and for the reasons given "by the chancellor, mis-user or non-user cannot be relied "on as a substantive and specific ground of a dissolution.

"The ground on which I place my opinion that the cor-"poration is dissolved is that they have done and suffered "to be done acts equivalent to a direct surrender. The "chancellor concedes, and it does not in my judgment "admit of a doubt that a corporation may be dissolved by a "surrender of all its corporate rights.

"In 2 Kyd on Corp., 467, the rational and true rule is "laid down. He says: 'The rule adopted in all the cases "which have occurred on this question seems to have been "this, that where the effect of the surrender is to destroy "the end for which the corporation, or the corporate "capacity was instituted, the corporation or the corporate "capacity is itself destroyed.' And we have the high "authority of Lord Coke to the same effect. * * *

"Here is then a corporation possessed of nothing, aban-"doning the end and object of its institution without pre-"tending that it ever hopes or expects to resume its "functions. * * * For all the substantial purposes of "justice, and in effect, the corporation is dissolved. * * *

"In the case of *King* v. *Pasmore*, 3 Term, 244, "Justice ASHURST says: 'As to the contrariety of "opinions in the books on this subject, I shall not attempt "to reconcile them, but we ought to lean to that side "which is supported by reason. Possibly the seeming "contrariety may have been in some degree occasioned "by the equivocal use of the term dissolved; as far as "concerns the power of the crown to grant a new charter, "I think the corporation was dissolved. As to some "particular purposes, which do not relate to the powers of "government, but to personal privileges, which are an-

"nexed to the persons of the remaining individuals, such "as rights of common, etc., it may be said not to be "dissolved at least till the crown interposes.' Justice "GROSS, in the same case said: 'Now, in point of good "sense, when the purposes for which a corporation was "created can no longer be answered, there is no reason "why it should not be considered to be so far dissolved "as that the crown may raise there a new corporation, "etc.' * * * *

"In point of good sense, this corporation was dissolved "within the meaning and intent of the act as regards "creditors when it ceased to own any property, real or "personal, and when it ceased for such a space of time "from doing any act manifesting an intention to resume "its corporate functions. The end, being and design of "the corporation were completely determined; and if even "it had the capacity to reorganize and reinvigorate itself, "the case has happened when, as relates to its creditors, "it is dissolved."

The general doctrine on this subject is stated in Angell and Ames on Corporations, section 774, as follows:

"It is said that all franchises may be lost by non-user "or neglect; and, as the strongest case of neglect, the "case put is where the parties are called upon in a court "of justice to state their right, and neglect or refuse to "do it."

The same principles are laid down by Ashurst, Justice, in the case of *Rex* v. *Amery*, 5 Term, 567.

In the case at bar the company not only assented to the filing of the petition and to the injunction prohibiting it from the transaction of the business for which it was created, and to the appointment of a receiver to take possession of, marshal and distribute its assets, but as has been already shown, actually participated in the appointment of the receiver, and appeared in court and asked for the appointment of its attorney and one of its stockholders as

such receiver under the act providing for the dissolution of insurance companies. It is entirely clear that the filing of the petition could have been for no other purpose than the dissolution and destruction of the corporation itself, after the assets had been marshaled and distributed. But if the original assent to and participation in the appointment of the receiver by the company should be held not to be an abandonment and surrender of its charter and franchises, then surely the surrender of its property to the receiver, its failure to make any attempt to regain possession or control of the same, or to discharge the receiver or to dissolve the injunction, the failure to object to any of the receiver's acts in the administration of the estate, its acquiescence in the superseding of its contracts with its policy holders, and the change of those contracts into a present indebtedness, and the payment of its creditors on the indebtedness so ascertained, and a sale of its assets by the receiver, and all this continued for four years without the slightest objection of record, or otherwise, must be held to be a full and complete ratification of the original appointment of the receiver, and an unqualified submission to the jurisdiction of the court, and an unquestionable abandonment of its corporate rights and franchises.

Counsel for plaintiff in error contends that it is in no way chargeable with notice of the acts of the receiver in the administration of the estate, since actual written notice was not formally served upon the company or its solicitor, and hence that it has waived no rights, and that nothing can be implied against it, and that it is not estopped because of any proceedings taken in the case after the filing of the petition. Counsel for defendant in error entirely dissent from this view of the law. The petition was filed

for the sole purpose of placing the possession of the *res* in the hands of the court, through the possession of the receiver, for the express purpose of marshaling and distributing its assets, and ultimately reclaiming the corporate rights and franchises, and the court having thus taken possession of the *res*, through its receiver, every person interested in the estate, whether a party to the suit or not, is chargeable with notice of every step taken in the progress of the case.

In the case of *Turner* v. *Jenkins*, 79 Ill., 228, where a deposition had been taken without notice to the guardian of infant defendants, the court say:

"It would be otherwise had defendants been adults. "Had they made no objection they would have been con- "sidered as having waived the want of notice as to taking "the testimony."

In the case of *Petrie* v. *The People*, 40 Ill., 344, the court say:

"While in the English courts the practice requires "notice to be given to the opposite party, to his attorney, "or some officer of the court on his behalf, before any "step is taken, and where in cases of this character it is "perhaps the better practice, yet it has not been regarded "as indispensable in our practice. After a party has been "once brought into court the presumption is that he is "present and cognizant of every step taken in the cause "until it is terminated, unless there has considerable time "elapsed without taking any steps in the case. Here "appellant had been brought into court, had entered his "appearance, had filed his demurrer, and resisted the mo- "tion for alimony *pendente lite* only a few days previously, "and was fully aware of the order and its requirements, "and he was in default under it and subject to attach- "ment for a contempt for a non-compliance with the order. "And we must presume that he was fully aware that the "motion was made for the attachment, and this being so, we

"see no reason to say that the court erred in having him "arrested and detained until the order was complied with, "or until he was otherwise legally discharged. He was "in court, and had he been able to purge himself of the "contempt, he only had to ask the court for leave to do "so, when it would have been granted."

The same doctrine is enunciated in *Post* v. *Dorr*, 4 Edwards Chy., 412, and *Gregg* v. *Brower*, 67 Ill., 525.

The plaintiff in error must therefore be held to have assented *pari passu* to all the proceedings in the cause, and in consequence of such assent and acquiescence to have waived fully and forever every right it might have asserted at the threshold of the proceedings, either to question the constitutionality and validity of the law under which the petition was filed, or to maintain that the receiver was improperly appointed or continued, or to deny that it has suffered acts to be done which are a practical surrender and abandonment of its corporate rights and franchises.

If, under the circumstances of this case, and the law and the authorities applicable thereto, the positions taken by counsel for plaintiff in error should be approved and sustained by the court it would mark a new era in the history of equity jurisprudence and establish a precedent in the attitude of courts of justice towards insolvent corporations which have surrendered their franchises and abandoned their functions, and ceased to effectuate the objects of their creation, which would be as novel and extraordinary as it would be subversive of all principles of justice and rules of equity.

VI.

Touching matters which counsel for defendant in error deem dehors the jurisdiction and consideration of this court.

As we understand the decision of this court in *Murdock v. City of Memphis, supra*, we have now considered all the questions which can, under any circumstances, properly be examined or decided by this court. But lest our silence should be construed as an implied assent to the correctness of the views of counsel urged with so much force as to other points, we venture to state our positions relative thereto without entering into any argument to sustain them.

(1.) The theory of plaintiff in error that it could not lawfully be proceeded against because of its supposed offer to re-insure its risks is wholly untenable:

(*a.*) Because there never was any offer nor any proposition to re-insure. A suggestion was made relative to a hypothetical plan which perished before it reached the embryonic state. (Rec., 20, 78.)

(*b.*) Had those suggestions ripened into a proposition, it would have been only a cunning contrivance for further depleting the assets of the company; for transferring its best risks and assets to some other company, and leaving the undesirable risks and the worthless assets for a more disastrous wreck. (Rec., 20, 78.)

(*c.*) The attempt of interested parties to torture this

suggested scheme into a *bona fide* offer to re-insure is instructive but wholly unsuccessful. The terms of this written instrument filed in court by plaintiff in error can hardly be varied and reconstructed by such parol testimony.

(*d.*) The examiner properly characterized the scheme as one to "twist the policies," not for the company to re-insure all its risks at once, "but to give another "company the privilege of coming in and issuing new "policies of its own to each individual policy holder, "on such terms as it could make with the policy "holders themselves, and to take their pay out of "such assets as they might choose of the company." (Rec., 20.)

(*e.*) It was plainly the duty of the auditor to file his petition as required by the statute, and to have become a party to such a fraudulent scheme would have been malfeasance in office.

(*f.*) The court properly refused to sanction a scheme so unauthorized, inequitable and unprecedented; to have done otherwise would have been a prostitution of its functions and a travesty on equity.

(2.) Plaintiff in error was manifestly and hopelessly insolvent when the petition was filed.

(*a.*) Its impairment on the basis provided by law was $148,171.58 (Rec., 6). This is uncontroverted and incontrovertible.

(*b.*) The attempt to decrease such impairment by claiming and proving the "good-will" of the company to

be worth $100,000 or $150,000, borders closely upon the ridiculous.

(*c.*) Good-will is defined by Lord Eldon to be "the "probability that the old customers will resort to the "old place." The probability that any policy-holder would have "resorted to the old place," unless it had been to curse, if not to chastise those who had defrauded him, was anything but cheerful or valuable.

(*d.*) The good-will of an insurance company is not an asset within the meaning of the insurance laws of Illinois. "The good will of the company would be "a poor species of assets to pay losses with, and it "is funds which will pay losses that an insurance "company is required by law to have." (Ins. Laws Ill., p. 23, Sec. 10.)

(*e.*) The Clapp & Barry securities for which, as was shown by its books, the company had never paid in whole or in part, and which it did not own, were in no sense assets of the company. (Rec., 14, 75.)

(3.) The claim that the condition and mismanagement of the company was wholly due to the secretary, and that therefore the auditor should not have filed his petition, is not well founded.

(*a.*) The insurance laws were enacted for the protection of the public, and the wrong doing of one of its officers by which policy holders are defrauded is the wrong doing of the company.

(*b.*) The drawing of dividends by stockholders declared by the board of directors was one of the causes of the company's insolvency and failure.

(*c.*) The directors were clearly guilty of negligence in permitting the secretary to carry on for years a systematic scheme of fraud, perjury and robbery, which by the exercise of ordinary diligence they could have discovered.

(4.) The claim of the plaintiff in error, that the law of 1874 could not be enforced as against this company, because section 10 of the Life Insurance act provides that a penalty may be imposed upon the officers or agents of a company for issuing new policies, after the auditor, because of the deficiency of its assets, orders it not to do so, is without a shadow of reason.

(*a.*) The law of 1874 either conflicts with said section 10 or it does not.

(*b.*) If it does, then it repeals by implication all or such parts thereof as are inconsistent with the later statute.

(*c.*) If not in conflict, it is a cumulative remedy, and it was the duty of the auditor to proceed under one or the other, or under both, in his discretion.

(5.) The claim that the directors of the company were "ready and anxious to make full restoration" is without foundation. There is no evidence to support such a statement.

(*a.*) Not one of the directors has ever intimated of record or otherwise, an intention or desire to restore a single dollar, or to undo to any extent the wrong done to the defrauded policy holders for whose benefit this proceeding was begun.

(*b.*) They have resisted and are now resisting the receiver, by every means known to the law, in his efforts to enable the policy holders to obtain the present value of their policy contracts.

(*c.*) The ingenuity displayed by counsel in transforming a hypothetical scheme for so-called re-insurance into full restitution for wrong doing is truly admirable, but it belongs rather to the realm of magic than to the domain of law.

E. B. Sherman,
J. L. High,
Counsel for Defendant in Error.

IN THE

Supreme Court of the United States.

October Term, A. D. 1884.

No. 184.

THE CHICAGO LIFE INSURANCE COMPANY,
Plaintiff in Error,
vs.
THOMAS B. NEEDLES, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS,
Defendant in Error.

In Error to the Supreme Court of Illinois.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

By C. C. BONNEY,
Its Solicitor and Counsel.

CHICAGO:
PRINTED BY THE CHICAGO LEGAL NEWS COMPANY, 175 MONROE STREET.
1885

SUPREME COURT OF THE UNITED STATES.

CHICAGO LIFE INSURANCE COMPANY,

vs.

THE AUDITOR OF ILLINOIS.

Brief of the Argument of C. C. Bonney, for the Plaintiff, in Reply.

MAY IT PLEASE THE COURT:

In reply to the matters contained in the brief filed for the defendant in error, I submit the following:

I.

The decrees of the Illinois courts impair the obligations of the contracts in question if they deny to the members of the corporation the equal protection of the laws; and conversely, they deny such equal protection if they violate the obligations of those contracts.

What were those contracts? The charter was an agreement between the corporation and the State which authorized the business of insurance, subject to the same regulations, so the Illinois Supreme

Court holds, that the Legislature might lawfully impose on natural persons engaged in the same business. The outstanding policies of the company were agreements binding the policy holders to pay during life, or for a fixed term, certain annual sums; and binding the company, *upon the condition precedent* of such continuous payment, to pay, at the maturity of the contract, a stipulated amount. Not one policy holder had made complaint of any failure of the company to perform one of those contracts. How many and which of them would have been kept in force, and finally become matured and payable by the company, no one could foretell or foresee.

But so zealous was the auditor of public accounts that, acting wholly as a volunteer, he instituted proceedings and obtained orders in judicial form, which, if sustained, will result in simply annulling all the obligations of those contracts, and substituting for them a totally different set of obligations, binding the policy holders to surrender the obligations of the company they might desire to hold and enforce, and the company to pay a supposed commutation of a liability that might mature decades later or never mature at all. For it is well known that many policy holders, when their circumstances change, suffer their policies to lapse. Here was no voluntary suspension of business, nor any seizure of the corporate assets to satisfy matured obligations. There was neither non-user nor misuser of the corporate franchises. There was neither insolvency nor bankruptcy requiring a general administration of the assets.

The obligation of a contract, says this court, is "that duty of performing it, which is recognized

and enforced by the laws." It embraces both the duty to perform, and the right to compel performance.

Curran v. *Arkansas*, 15 How. 319.
Sedgwick S. & C. L., 603, and note.

But by the decrees of the Illinois courts, all duty to perform, and all right to compel performance of those contracts is simply annulled.

Yet any impairment, the degree being immaterial, is within the prohibition of the constitution.

Walker v. *Whitehead*, 16 Wall. 317.

II.

But it is claimed that insolvency is not a Federal question, and that it has been decided adversely to the company by the State courts.

In general, it is true that mere insolvency, or nonuser, or misuser of corporate franchises, is not a Federal question. But the question whether the obligations of contracts have been impaired under a false pretense of insolvency, or other cause of forfeiture, is a Federal question of the most perfect and important kind.

In the present instance the Federal question necessarily includes the whole case. All the questions involved in it are included in the one whether, under the Illinois statutes and proceedings, the rights of the Chicago Life Insurance Company, and the persons acting under that name, have been violated, contrary to the provisions of the national constitution.

The principal sub-questions are, whether the obligations of contracts to which the company is a party, have been impaired, and whether the persons act-

ing under the corporate name have been denied the equal protection of the laws.

To determine these questions, the court must inquire, what was the contract? To what conditions of forfeiture was it subject? In what do the alleged violations of the national constitution consist? Do the acts complained of constitute an impairment of contract obligations? Do they deny to the persons interested the equal protection of the laws, or are those acts within the conditions of the contracts involved, and so in harmony with their obligations?

A reasonable punishment inflicted after a conviction, in due course of law, is no denial of the equal protection of the laws; but a judgment of the same penalty for a fictitious offense, not established in due course of law, but by an extraordinary proceeding, to which other persons are not subject, would be such a denial. Hence, the entire case demands review, to enable this court to determine whether the constitution of the United States has been violated.

In such a case, the *reasonableness* of a regulation, or exercise of authority, may become a Federal question. For all persons, natural or artificial, are subject to reasonable restraints and regulations. But the national constitution can not be evaded and defeated, and the evasion and defeat upheld, by calling a thistle of oppression a rose of the public weal.

And in such a case, also, this court is the final and conclusive judge of the scope and limitations of all the powers of the State authorities in all their relations to the constitution and laws of the United States. The State tribunals can not determine for this court the extent of those powers, nor the pro-

priety of any authority exercised under them, but must accept and carry into effect, as the supreme law, the views which this court may declare.

III.

It is the national constitution, not the statute of Illinois, that *exempts* the corporation from the operation of any laws enacted subsequently to the charter, and which are at variance with the substantial rights thereby granted, or the interests thereunder acquired.

IV.

The statutes under which the proceedings in question were taken, are highly penal in their character, and will therefore be strictly construed in determining whether they infringe the charter contract, and violate the guaranties of the national constitution.

The entire proceeding of the auditor is for the infliction of penalties and the enforcement of alleged forfeitures. But the case is in equity, and equity abhors forfeitures and penalties, and every question in the case is to be decided in equity, and not at law merely, for the transcendant jurisdiction of equity extends to highest realms of constitutional law, as well as to the humblest walks of common life, and the distinctions between law and equity are recognized in and perpetuated by the constitution itself.

Even if, at law, a technical forfeiture has been incurred, equity will, if reason and justice so require, intervene and give relief. But in the present case,

the essential nature of the proceeding, and the duty of the tribunal in which it was brought, seem to have been alike wholly misconceived.

V.

It is very important to observe that if there were in express terms, an unlimited reservation of the power to alter, amend or repeal the charter, still the auditor's proceeding would be a flagrant violation of the obligations of the contracts between the insurance company and its policy holders, by radically changing their terms, and also an impairment of the obligations of the implied contract between the State and the corporation, that property and contract rights acquired under the charter, should be protected. The proceeding is also most manifestly a denial to the members of the corporation of that equal protection of the laws which other citizens enjoy.

Suppose, for the sake of the argument, we admit the entire case claimed by the auditor, even then the proceeding is a monstrous violation of equity and of the contract rights involved. For what was the contract, conceding for the sake of the present point only, that the charter is subject to the subsequent statutes? Merely this, that if the alleged deficiency existed in fact, the company might be prevented from issuing policies till the deficiency should be supplied. The penalties adjudged are very far beyond anything authorized by the statutes under which the suit was brought.

VI.

Another distinction may well be sharply taken. The Chicago Life Insurance Company is not seeking exemption from the common burdens of taxation,

or the common liability to eminent domain; nor is it claiming any unusual or extraordinary privilege. On the contrary, the members of that company only ask at the hands of this court, protection in the rights and privileges which the great mass of citizens enjoy.

It is also important to observe the difference between an official assault on a bank, or an insurance company, and a suit in which some private person or persons claiming to have suffered injury appear as the prosecutors. In the latter case, the public wait for the adjudication invoked; while in the former, they leap to the conclusion that the official attack would not have been made but for urgent and unquestionable cause, and thus the attack itself is destructive, though no real cause for it may exist. The power for which the auditor contends is not a just one, which may yet be abused in exceptional instances, but it is essentially vicious in its nature, and should never be permitted to act at all, but all such proceedings should be taken, only upon the proper complaint of a party claiming a personal interest, and that he has suffered or is threatened with injury.

The auditor's examiner testifies that the offense, for which the suit was brought, was "what we might call a natural mistake, a natural oversight," (R. 26,) and yet counsel contend that the obligations of the charter contract between the state and the corporation, and the obligations of the insurance contracts between the company and its policy holders, were not violated by decrees practically annulling those contracts, forfeiting the corporate franchises, and confiscating the entire corporate property, which is in fact the property of the

citizens of the United States who are authorized to act in the corporate name, and by that name to appeal for protection to all the courts of justice. For such is the effect, though not the form, of those decrees.

As this court says in the recent case of *Kansas, etc., R. R. Co.* v. *Atchison, etc., R. R. Co.*, 5 S. C. R. 209. A private corporation is, in fact, but an association of individuals united for a lawful purpose, and permitted to use a common name in their business and to have a change of members without dissolution. Can it be necessary to contend before this court that by such an association those individuals do not forfeit their right to the equal protection of the constitution and the laws?

VII.

The charge that the stock subscriptions had not been paid in, is no justification of the auditor's suit; for it was not only not a proceeding to collect the alleged unpaid amounts, but one utterly destructive of the object of payment. If the money was due, the liability to pay it was a valuable asset, for the responsibility of the stockholders is not questioned.

But more than that, the charter expressly authorized the receiving of securities for ninety per cent. of the subscriptions for capital stock. (Sec. 2, 9; Rec. 100, 102.) If the money had been actually paid in, it would have been the duty of the directors to invest in such securities, and therefore the acceptance of them from the stockholders on their subscriptions, made the stock practically paid in full, and warranted the statement that it was so paid, within the meaning of the charter.

And again, the payment of the balance of the subscriptions for stock was not made a condition of the corporate existence, nor a ground of forfeiture of the corporate rights or property. The law provides other remedies for all such cases. A *scire facias* to forfeit the charter for such a cause would have been laughed out of court; but such a suit would have been much less absurd than the auditor's proceeding.

The death penalty is not a remedy, but a punishment. The purpose of a remedy is the enforcement of a right of the complaining party, not the destruction of his adversary.

Neither the broad and general authority of the Legislature over the subject of remedies, nor an unlimited power of alteration or repeal, if such a power had been reserved, could warrant the decree of practical confiscation entered in this case.

VIII.

But waiver, estoppel and consent are invoked to aid a desperate cause. A waiver of what? The record shows that nothing was waived, and we are accustomed to accept the record as evidence of the facts it recites.

Estoppel by what? Not by anything before suit brought, for the calamity was sudden and unforeseen. Not by the delay of the auditor in bringing his suit to a final hearing, for that would be to give him the benefit of his own wrong, and preclude a just defense by the acts, not of a party, but of his adversary.

Consent to what? When the record shows that from the time the auditor's determination to destroy

the Chicago Life Insurance Company was clearly shown, his efforts have been resisted with all the resources the corporation could command.

But waiver and estoppel, and consent are not in issue in this record. They are matters that have never been litigated between the parties. They are not known to the decree which the present writ of error is brought to reverse. They are post-judgment inventions. They appear for the first time in the court above. A universal rule of practice, founded on the plainest principles of justice, forbids that they be substituted for the cause set forth in the auditor's petition, and made the basis of a judgment in this court.

The argument that the company is bound as having consented to proceedings of which it had no knowledge, and no opportunity to oppose, shows the desperate strait to which the auditor's counsel are driven. But the administrative proceedings, to which consent is alleged, are not in this record, and can not be considered by this court.

The real truth of the matter is quickly told. Fearing the worst from the absconding of the secretary, and anxiously desiring to save the company, the directors begged for time to re-insure all its risks. This was refused by the auditor in person. R. 59.

Believing that the refusal arose from a doubt of his powers, instead of a purpose to destroy; and that from the confusion resulting from the secretary's flight, the appointment of a receiver was temporarily inevitable, the directors endeavored to secure one who would be friendly to the interests involved.

But they carefully saved all the rights of the company, as the order appointing the receiver, and their answer, filed a few days later, fully show. Then

they sought leave to resume the management of their own affairs, under such a supervision by the court, as would render any wrong doing on their part impossible. This was denied, and the fight for the corporate life began and has been continued to the final struggle now in progress before this ultimate arbiter of its fate.

Is there anything in this story discreditable to the corporation or to its directors? Does it not strongly commend them both to the favor of the court?

Is submission to an arrest which an accused person is powerless to resist, a ground for depriving him of life, liberty and the pursuit of happiness?

If a good ground of suit existed when the proceeding was brought, there is no need of invoking waiver or estoppel, and to do so is to betray a consciousness that the original cause is not quite strong enough for the purpose.

IX.

The essential nature of the power on which the auditor's suit depends, deserves attention. It is arbitrary and despotic. It is of a recent origin. It is new to the American system. It is hostile to the fundamental principles of free government.

If that power can now obtain the sanction of this court, all the great corporate interests of this country will soon be made to recognize its authority. For them, the guaranties of the constitution, and the shield of the Dartmouth College case, will exist in vain. New forms of the conditions of corporate existence and action, and new definitions of insolvency and the police power will be invented; and new proceedings in the guise of remedies will be devised, till corporate

industries will exist only during the pleasure of the political authorities. That power is the new Cæsar.

Sustained by the State tribunals, he now appeals to this court to sanction his usurpations and uphold his claim to an unlimited dominion over the entire domain of capital and labor.

Within its proper sphere, the police power is benign in its results, and indispensable to good government. But while so worthy a servant, within proper bounds, it would prove, like fire, an insatiable master if freed from all restraints.

X.

I thank my learned opponents for the many matters which their brief contains, that, properly applied, directly and forcibly sustain the positions taken in my own. Defendant's brief shows, among other things, that the stock subscriptions were amply secured, p. 4. That no one of the conditions precedent to the appointment of a receiver under the dissolution act had matured when the receiver was appointed, p. 7, Sec. 5. That the holders of unmatured policies are not creditors, and do not hold debts within the meaning of the act, p. 8, Sec. 6. That the absconding of the secretary, and sensational articles published in the newspapers, were the immediate cause of the embarrassed condition of the company, p. 11. That the acquiescence of the company in the appointment of a receiver was a mere temporary expedient, after the auditor had refused the proposal of the directors to re-insure the risks, p. 12. That the auditor's counsel are extremely anxious to shift the controversy in this court from the question whether there was

just ground for the auditor's suit, to the merely incidental and immaterial matter of an incipient negotiation for the purpose of relieving the embarrassments of the company, which the court refused to approve, p. 14. That the auditor's proceedings to convert the outstanding contingent liability of the policies into a present, fixed indebtedness, was taken without any notice to the company, p. 16.

Defendant's brief contains a statement of a bill filed by the receiver to recover $55,045 for dividends paid to the stockholders, p. 16; and as this is a matter outside of the record it suggests the inquiry why it was not also stated that another bill was filed at about the same time to recover the additional sum of $224,644.75 from the directors, which the receiver wants in addition to all the assets of the company to satisfy its supposed liabilities. The original alleged deficiency, on a commercial basis, was but $75,205.58; and the assets, as stated by the auditor's examiner, were $196,685. The fact that the receiver now wants $279,689.75 in addition to the entire assets of the company is a sufficient commentary on the waste and mismanagement inseparable from a political supervision and control of business affairs.

The defendant's brief concurs in my position that a corporation stands precisely upon the same footing as to the exercise of its contract rights, with all private citizens; and that a charter contract is, in effect, but a species of property, p. 22; and that a basis of the exercise of the police power is that one must use his own property in such a manner as not to injure others, p. 33.

Defendant's counsel cite, in succession, a number of cases relating to banks, p. 24, *et seq.* These cases are not in point. Money, and banking institutions

for transacting the financial business of a people, are a necessity of civilized life; and banking corporations stand upon precisely the same footing in respect of legislative regulation and control, as those which supply transportation, and deal in food and water. Insurance, as was shown in my original brief, is not such a necessary, and is not even an act of commerce.

The defendant's briet also shows that a judicial inquiry in such a case must be fair and impartial, and calculated to secure and preserve the rights of all parties to be affected by it; and that any preliminary restraint must be only preservative, and subject to the final judgment of the court: p. 26. Not one of the authorities cited for the defendant turns upon a point similar to that which is the basis of the auditor's suit. Most of them rest upon clear charges of violations of the charter, or well recognized grounds of forfeiture. The clear distinction between the police power proper, and the general right of legislative regulation, seems to be overlooked, and the two classes of cases confused: pp. 30, 31. No such decree of corporate death and confiscation as that involved in the present case, is shown in any authority cited for the defendant, and it is confidently believed that no case parallel in pleadings, evidence and decree, can be found in the reports.

The claim of the learned counsel that the receipt of dividends which the stockholders might, in case of insolvency of the corporation, be required to refund; or the non-payment of obligations recognized and well secured, constitutes a "gross misuser of the corporate franchise;" and that *scire facias* or *quo warranto*

could have been maintained for such a cause, must surely be an inadvertence arising from the zeal of discussion. I have quite too much respect for the knowledge and ability of my learned friends to seriously impute to them the holding of such views.

The authorities cited in defendant's brief (pp. 38, 39, 40) are precisely in point to sustain the present writ of error, and show that the auditor's proceeding was without just warrant, and the decree in his favor ought to be reversed. There is a clear distinction between inherent business rights, and privileges conferred by legislative grace. The contract must not be impaired under pretense of changing the remedy. The right must not be embarrassed with conditions and restrictions so as seriously to impair its value. New remedy regulations must not infringe substantial rights of property or of contract. In case of a general repeal under a reserved power, personal and real property and contract rights acquired during the existence of the charter would remain and be entitled to the protection of the courts, p. 43. All these points are good law, and they are fatal to the auditor's claim. That a contract may be forfeited by a voluntary surrender, or by a judgment of forfeiture for willful misuser or non-user. I freely admit, but the cause of forfeiture must be willful and persistent, not accidental, or by the wrongful act of a third person, p. 43.

The real object of the amendment to the charter, was the change of name. There was power to issue policies of life insurance without the amendment, p. 44. My claim that the non-exemption clause of the amendment was merely declaratory of the common law, and gave no new or enlarged power of control,

is nothing novel. Thousands of statutory provisions can be found in the laws of every State, which are merely declaratory of the common law.

The authorities cited for defendant, pp. 50–53, are also hostile to the authority exercised under the Illinois statutes against the insurance company. They show that the attempt to take away and distribute all the property of the corporation was, under the circumstances, a flagrant usurpation, p. 50. The regulation of corporate affairs must be calculated to protect the rights of the stockholders as well as those of the creditors. All such regulations must be consistent with the object and scope of the act of incorporation and sheer oppression and wrong can not be inflicted under the guise of amendment or alteration. The alterations must be *reasonable* and made in good faith, p. 51.

The claim that the provision in the Pennsylvania College cases was, in effect, the same as that in the present case, is utterly untenable. There the words plainly mean, as this court held, that by an act of the legislature the charter might be changed, p. 53.

All through their argument the learned counsel for the auditor seem wholly to overlook *the authority exercised under the statutes* of which complaint is made; and the denial to the persons interested of *the equal protection of the laws*. They confine themselves merely to a discussion of the statutes in the abstract. But this court does not deal with abstractions. It regards the practical results of an actual proceeding. As shown in my original brief, the statute may be harmless enough in the abstract, and yet may be so construed and applied as to work the most grievous oppression under the forms of law.

The authorities cited in defendant's brief, p. 57,

et seq., are not in point to his benefit. It is he, not the company, that has tried to shift the ground since the issues were formed, and the final decree of the court below entered. The record of the first order entered in the case, and of the answer filed thirteen days afterward, fully informed the auditor of the determination of the company to stand upon all its rights, and protect or defend them as the occasion might require. The learned counsel seem not to perceive that what we are asking this court to reverse is *the final decree* of the circuit court, not merely a preliminary and *temporary order* entered in an extraordinary emergency, and believed by the company, when entered, to be intended for the protection of all the interests involved.

The elaborate repetitions of the main positions taken in behalf of the auditor, throughout the last twenty pages of the defendant's brief, seem intended merely to emphasize those positions, and to afford an opportunity for the display of that efflorescent rhetoric, which is sometimes the only recourse of an advocate who feels that the logic of his case is not strong enough to entitle him to a victory.

In conclusion, I have only to say that if the decree against the Chicago Life Insurance Company could be affirmed, any corporation might be destroyed, and its property confiscated, at the pleasure of the political power of the State in which it exists.

Respectfully submitted,

CHARLES C. BONNEY,

Counsel for Plaintiff in Error.

12

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1884.

NO. 181.

THE CHICAGO LIFE INSURANCE COMPANY,
Plaintiff in error,
vs.
THOMAS B. NEEDLES, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS,
Defendant in Error.

In Error to the Supreme Court of Illinois.

ILLINOIS INSURANCE LAWS.

FILED WITH PLAINTIFF'S BRIEF.

INSURANCE LAWS

OF THE

STATE OF ILLINOIS.

1879.

INSURANCE LAWS.

CHAPTER SEVENTY-THREE OF REVISED STATUTES, 1877, AND SUBSEQUENT ACTS

SECTION REFERENCES—The number of sections up to and including No. 111 corresponds to the figures in bold-face type as observed in the Revised Statutes, Chapter Seventy-three.

FIRE, MARINE AND INLAND NAVIGATION.

SECTION.

1. Who may incorporate—purposes. May insure against lightning.
2. May re-insure.
3. Declaration—copy of charter.
4. Form of charter.
5. Restriction.
6. Capital of joint stock companies—mutual companies—risks of joint stock companies.
7. Opening books of joint stock and mutual companies.
8. Investment of capital.
9. What real estate company may hold—sale
10. Charter, etc., examined by attorney-general—capital by auditor—certificate filed—commence business—evidence.
11. By-laws—seal.
12. Dividends—"year" defined.
13. Mutual companies—notes—members—assessments—liability.
14. "Mutual" or "joint stock" indicated on policy, etc.
15. Suits.
16. Liabilities of corporators, etc.—notes.
17. Joint stock and mutual companies may extend charter—mutual may become joint stock.
18. Increase of capital stock.
19. Companies heretofore formed subject to this act.
20. Bodies corporate or politic.
21. Annual report to auditor—inquiries by auditor—replies—report concerning original notes—repeal—penalty for not reporting—form of report furnished.
22. Foreign companies—agents—service of process—after company stops business—filing charter, etc.—deposit—exchange of securities—interest—fees—compliance with this act necessary—statement renewed annually—renewal of certificate—agents, etc., advertised—applies to all foreign companies, etc.—penalty for neglect to make statement—when statement filed.

22½ When auditor may revoke certificate.

23. Examinations by auditor or his appointees—where deficiency appears—liability of stockholders for additional loss—mutual companies—transfer of stock not to relieve—unsound company stop business.
24. Suits for penalties.
25. Duration of company—legislative control, etc.

SECTION.

26. Rights of old companies—lien on stock—stock impaired—reduction of stock—receivers to make statements—publication of annual statements.
27. Fees.
28. Agents responsible—embezzlement by.
29. Reciprocity.
30. Tax on net receipts.
31. Township companies excepted.
32. When act takes effect.

DEPOSITS OF FOREIGN COMPANIES.

33. When foreign company need not deposit here.
34. Securities by foreign companies.
35. Emergency.

LIFE INSURANCE.

36. Guarantee capital—investment of.
37. Examination by auditor—fee.
38. Foreign companies must conform to section one.
39. Election of directors by mutual companies.
40. Annual statement
41. Form of statement.
42. Foreign companies—statement of.
43. Companies without United States—statement of.
44. Penalty.
45. When company must stop issuing policies.
46. Investment of funds.
47. Investment in other States.
48. Inquiries by auditor—revoke certificate—examination by auditor.
49. Dividend by mutual companies.
50. Foreign companies—agent—service of process.
51. State treasurer to receive deposits—interest.
52. Valuing policies—fee.
53. What life companies not to insure.
54. Rights of married women.
55. Reciprocity
56. Foreign companies—deposit copy of charter, etc.
57. To exhibit name of company, etc.
58. When deemed agent of foreign company.
59. Penalty.
60. Auditor's fees.
61. Publishing statements.
62. Repeal.
63. When act takes effect.

SURRENDER OF SECURITIES.
SECTION.
64. When company retires from business.

COUNTY FIRE INSURANCE COMPANIES.
65. Number of persons required to organize.
66. Declaration of copy of charter.
67. Directors—election—voting.
68. Officers.
69. Bonds of treasurer and secretary.
70. Powers of corporation.
71. Qualification for membership.
72. Property insured—policies—duration, etc.
73. Classification of property.
74. Location of property insured.
75. Proof of loss reference—award.
76. Assessment to pay loss.
77. Notice of assessment.
78. Suits to recover assessments, etc.
79. Annual statement.
80. Withdrawal from company—notice, etc.
81. Annual statement to auditor.
82. Proceedings to dissolve company.
83. Township companies may accept benefits.

TOWNSHIP INSURANCE COMPANIES.
84. Who may form.
85. How formed.
86. Directors—election of.
87. President—secretary—treasurer.
88. Bonds of secretary and treasurer.
89. Corporate powers.
90. Members.
91. Manner of insuring.
92. Risks classified.
93. Where company not to insure.
94. Notice of loss—adjustment—expense.
95. Assessments.
96. Notice of assessment to members.
97. Suits.
98. Annual statement.

SECTION.
99. Withdrawal of member.
100. Report to auditor—certificate—fees.
101. Dissolution.
102. Companies formed under act of 1872.

DISSOLUTION OF INSURANCE COMPANIES.
103. Involuntary dissolution—proceedings.
104. Voluntary dissolution.
105. When charters extinct.
106. Continued as to creditors, etc.
107. Appointment of receiver—his powers.
108. Duties of receiver.
109. Receiver to report to auditor.
110. Compensation and expenses.
111. Practice—plate glass, accident and steam boiler insurance companies.
112. Companies must comply—capital and deposits of plate glass, accident and steam boiler companies.

ADVERTISEMENT OF ASSETS BY FIRE INSURANCE COMPANIES.
113. What must be advertised.
114. Manner of advertising.
115. Authorized capital—how and when published.
116. Violation—penalty.
117. Duty of auditor in regard to violation.
118. Repeal.

REMOVAL OF SUITS FROM STATE TO UNITED STATES COURTS.
119. Application for license to be filed with auditor—form a declaration.
120. License.
121. Penalty for removal of suits—renewal of license after revocation—notice of revocation.
122. Penalty for transacting business in violation of the provisions of this act.
123. Repeal.

FIRE, MARINE AND INLAND NAVIGATION.

AN ACT *to incorporate and to govern Fire, Marine and Inland Navigation Insurance Companies doing business in the State of Illinois.* [*Approved March* 21, 1869. *In force July* 1, 1869.]

1. WHO MAY INCORPORATE—PURPOSES.] SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That any number of persons, not less than thirteen, may associate and form an incorporated company, for the following purposes, to-wit: To make insurance on dwelling houses, stores, and all kinds of buildings, and upon household furniture and other property, against loss or damage by fire or lightning and the risks of inland navigation and transportation. Any and all insurance companies hereafter incorporated under the provisions of act, which shall, in the declaration and charter provided to be filed, have expressed an intention to make insurance, or which shall have power to make insurance against loss or damage by the risks of inland navigation or transportation, shall have power to make insurance upon vessels, boats, cargoes, goods, merchandise, freights and other property, against loss and damage by all or any of the risks of lake, river, canal and inland navigation and transportation.

COMPANIES HERETOFORE FORMED UNDER THIS ACT MAY INSURE AGAINST LIGHTNING.] Any company heretofore incorporated under the provisions of this act which shall, in the declaration and charter filed in

accordance with the provisions of said act, have expressed an intention to make insurance against loss or damage by fire, is hereby authorized to insure, also, against loss or damage by lightning; and in all cases wherein any such company has heretofore insured against loss or damage by lightning, such insurance shall be binding on such company. [As amended by act approved May 31, 1879. In force July 1, 1879.]

2. MAY RE-INSURE.] § 2. Any companies organized under this act shall have power to effect re-insurance of any risks taken by them respectively.

3. DECLARATION—COPY OF CHARTER.] § 3. Such persons shall file in the office of the auditor of public accounts, a declaration, signed by all the corporators, expressing their intention to form a company for the purpose of transacting the business of insurance, as expressed in the first section of this act, which declaration shall also comprise a copy of the charter proposed to be adopted by them; and shall publish a notice of such their intention once in each week for at least four weeks, in a public newspaper in the county in which such insurance company is proposed to be located.

4. FORM OF CHARTER.] § 4. The charter comprised in such declaration shall set forth the name of the company, the place where the principal office for the transaction of its business shall be located, the mode and manner in which the corporate powers granted by this act are to be exercised, the mode and manner of electing trustees or directors—a majority of whom shall be citizens of this State—and of filling vacancies, (but each director of a stock company shall be the owner in his own right of at least five hundred dollars worth of the stock of such company at its par value,) the period for the commencement and termination of its fiscal year, and the amount of capital to be employed in the transaction of its business. And the auditor of public accounts shall have the right to reject any name or title of any company applied for when he shall deem the name too similar to one already appropriated, or likely to mislead the public in any respect.

5. RESTRICTIONS.] § 5. No company formed under this act shall, directly or indirectly, deal or trade in buying or selling any goods, wares, merchandise or other commodities whatever, excepting such articles as may have been insured by such company and are claimed to be damaged by fire or water.

6. CAPITAL OF JOINT STOCK COMPANIES.] § 6. No joint stock company shall be incorporated under this act in the city of Chicago, nor shall any company incorporated under this act establish any agency for the transaction of business in said city, with a smaller capital than one hundred and fifty thousand dollars, actually paid in in cash, nor in any other county in this State with a smaller capital than one hundred thousand dollars actually paid in in cash.

CAPITAL OF MUTUAL COMPANIES.] Nor shall any company formed under this act for the purpose of doing the business of fire or inland navigation insurance on the plan of mutual insurance, commence business if located in the city of Chicago, nor establish any agency for the transaction of business of said city until agreements have been entered into for insurance with at least four hundred applicants, the

premiums on which shall amount to not less than two hundred thousand dollars ($200,000), of which forty-thousand dollars ($40,000), at least, shall have been paid in cash, and notes of solvent parties, founded on actual and *bona fide* application for insurance shall have been received for the remainder, nor shall any mutual insurance company in any other part of the State commence business until agreements have been entered into for insurance with at least one hundred applicants, the premiums on which shall amount to not less than fifty thousand dollars ($50,000), of which ten thousand dollars ($10,000) at least shall have been paid in cash and notes of solvent parties founded on actual and *bona fide* applications for insurance shall have been received for the remainder. No one of the notes received as aforesaid shall amount to more than one thousand dollars ($1,000), and no two notes shall be given for the same risk, or be made by the same person or firm, except where the whole amount of such notes shall not exceed one thousand dollars ($1,000); nor shall any such note be represented as capital stock, unless a policy be issued upon the same within thirty days after the organization of the company upon a risk which shall not be for a shorter period than twelve months. Each of the said notes shall be payable in part or in whole at any time when the directors shall deem the same requisite for the payment of losses by fire or inland navigation, and such incidental expenses as may be necessary for transacting the business of said company. And no note shall be accepted as part of said capital stock unless the same shall be accompanied by a certificate of a Justice of the Peace, or Supervisor of the town or city where the person making such note shall reside, that the person making the same is in his opinion pecuniarily good and responsible for the same, and no such note shall be surrendered during the life of the policy for which it was given.

RISKS OF JOINT STOCK COMPANIES.] No joint stock fire insurance company organized under this act, or transacting business in this State, shall expose itself to any loss on any one fire or inland navigation risk or hazard to any amount exceeding ten per cent. of its paid up capital. [As amended by act approved May 11, 1877. In force July 1, 1877.]

7. OPENING BOOKS OF JOINT STOCK AND MUTUAL COMPANIES.] § 7. It shall and may be lawful for the individuals associated for the purpose of organizing any company under this act, after having published the notice and filed the declaration and charter, as required by the third section of this act, and also on filing in the office of the auditor of public accounts proof of such publication by the affidavit of the publisher of such newspaper, his foreman or clerk, to open books for subscription to the capital stock of the company so intended to be organized, and to keep the same open until the full amount specified in the charter is subscribed; or in case the business of such company is proposed to be conducted on the plan of mutual insurance, then to open books to receive propositions, and to enter into agreements in the manner and to the extent specified in the sixth section of this act.

8. INVESTMENT OF CAPITAL.] § 8. It shall be lawful for any insurance company organized under this act, or any such company incorporated under any law of this State, to invest its capital and the fund accumulated in the course of its business, or any part thereof, in bonds

and mortgages on improved unincumbered real estate within the State of Illinois, worth fifty per cent, more than the sum loaned thereon (exclusive of buildings, unless such buildings are insured and the policy transferred to said company), and also in the stocks of this State, or stocks or treasury notes of the United States, and also the bank stock of national banks, and also in the stocks and bonds of any county or incorporated city in this State, authorized to be issued by the legislature, and to lend the same, or any part thereof, on the security of such stocks or bonds or treasury notes, or upon bonds and mortgages as aforesaid, and to change and re-invest the same as occasion may from time to time require; but any surplus money over and above the capital stock of such fire and inland navigation insurance companies, or any such insurance companies incorporated under any law of this State, may be invested in or loaned upon the pledge of the public stocks or bonds of the United States, or any one of the States, or the stocks, bonds or other evidences of indebtedness of any solvent, dividend-paying institution incorporated under the laws of this State or of the United States, except their own stock: *Provided, always*, that the current market value of such stocks, bonds and other evidences of indebtedness shall be at all times, during the continuance of such loans, at least ten per cent. more than the sum loaned thereon.

9. WHAT REAL ESTATE COMPANY MAY HOLD—SALE.] § 9. No company organized by or under this act shall purchase, hold or convey real estate, excepting for the purposes and in the manner herein set forth, to-wit: 1st. Such as shall be requisite for its convenient accommodation in the transaction of its business; or, 2d, such as shall have been mortgaged to it in good faith by way of security for loans previously contracted, or for money due; or, 3d, such as shall have been conveyed to it in satisfaction of debts previously contracted in their legitimate business, or for money due; or, 4th, such as shall have been purchased at sales upon judgments, decrees or mortgages obtained or made for such debts. And it shall not be lawful for any such company to purchase, hold or convey real estate in any other case, or for any other purpose; and all such real estate as may be acquired as aforesaid, and which shall not be necessary for the accommodation of such company in the transaction of its business, shall be sold and disposed of within five years after such company shall have acquired title thereto, unless the company shall procure a certificate from the auditor of public accounts that the interests of the company will suffer materially by a forced sale thereof; in which event the sale may be postponed for such a period as the said auditor shall direct in said certificate; and the said auditor may also give such certificate and extend the time for holding real estate, in the like circumstances, on the application of any insurance company heretofore incorporated.

10. CHARTER, ETC., EXAMINED BY ATTORNEY-GENERAL—CAPITAL BY AUDITOR—CERTIFICATE FILED—COMMENCE BUSINESS—EVIDENCE.] § 10. The charter and proof of publication herein required to be filed by every such company, shall be examined by the attorney-general, and if found conformable to this act, and not inconsistent with the constitution or laws of this State, shall be certified by him to the auditor of public accounts, who shall thereupon cause an examination to be made, either by himself or by three disinterested persons,

especially appointed by him for that purpose, who shall certify, under oath, that the capital herein required of the company named in the charter, according to the nature of the business proposed to be transacted by such company, has been paid in, and is possessed by it in money, or in such stocks and bonds and mortgages as are required by the 8th section of this act, or if a mutual company, that it has received and is in actual possession of the capital, premiums or *bona fide* engagements of insurance or other securities, as the case may be, to the full extent and of the value required by the sixth section of this act; and the name and residence of the maker of each premium note forming part of the capital, and the amount of such note, shall be returned to the said auditor; and the corporators and officers of such company shall be required to certify, under oath, that the capital exhibited to those persons is *bona fide* property of the company. Such certificate shall be filed in the office of the said auditor, who shall thereupon deliver to such company a certified copy of the charter, and of said certificates, which, on being filed in the office of the clerk of the county where the company is to be located, shall be their authority to commence business and issue policies; and such certified copy of the charter and of said certificates may be used in evidence for or against said company, with the same effect with the originals, and shall be conclusive evidence of the fact of the organization of such company.

11. By-laws—seal.] § 11. The corporators, or the trustees or directors, as the case may be, of any company organized under this act, shall have power to make such by-laws, not inconsistent with the constitution or laws of this State, as may be deemed necessary for the government of its officers and the conduct of its affairs, and the same, when necessary, to alter and amend. And they and their successors may have a common seal, and may change and alter the same at their pleasure.

12. Dividend—"year" defined.] § 12. It shall not be lawful for the directors, trustees or managers of any such insurance company to make any dividend, except from the surplus profits arising from their business; and in estimating such profits, there shall be reserved therefrom a sum equal to the whole amount of unearned premiums on unexpired risks and policies; and also, there shall be reserved all sums due the corporation on bonds and mortgages, stocks and book accounts, of which no part of the principal or the interest thereon has been paid during the last year, and for which foreclosure or suit has not been commenced for collection, or which, after judgment obtained thereon, shall remain more than two years unsatisfied, and on which interest shall not have been paid; and also, there shall be reserved all interest due or accrued and remaining unpaid: *Provided, always*, that any company may declare dividends not exceeding ten per cent. on its capital stock in any one year, that shall have accumulated and be in possession of a fund, in addition to the amount of its capital stock—and of such dividend, and all actual outstanding liabilities, equal to one-half of the amount of all premiums on risks not terminated at the time of making such dividend. Any dividend made contrary to these provisions, shall subject the company making the same to a forfeiture of its charter, and each stockholder receiving it, to a liability to the creditors

of such company to the extent of the dividend received, in addition to the other penalties and punishments in such case made and provided. This section shall not apply to the declaration of scrip dividends by participating companies; but no such scrip dividends shall be paid except from surplus profits, after reserving all sums as above provided, including the whole amount of premiums on unexpired risks. The word "year," wherever used in this section, shall be construed to mean the calendar year.

13. MUTUAL COMPANIES—NOTES—MEMBERS—ASSESSMENTS—LIABILITIES.] § 13. All notes deposited with any mutual insurance company at the time of its organization, as provided in section six (6), shall remain as security for all losses and claims, until the accumulation of the profits, invested as required by the eighth (8) section of this act, shall equal the amount of cash capital required to be possessed by stock companies organized under this act, the liability of each note decreasing proportionately as the profits are accumulated; but any note which may have been deposited with any such mutual insurance company subsequent to its organization, in addition to the cash premium or any insurance effected with such company, may, at the expiration of the time of such insurance, be relinquished and given up to the maker thereof, or his representive, upon his paying his proportion of all losses and expenses which may have accrued thereon during such term. The directors or trustees of any such company shall have the right to determine the amount of the note to be given, in addition to the cash premium, by any person insured in such company; but in no case shall the note be more than five times the whole amount of the cash premium. And every person effecting insurance in any mutual company organized under this act, and also their heirs, executors, administrators and assigns, continuing to be so insured, shall thereby become members of said corporation during the period of insurance, and shall be bound to pay for losses and such necessary expenses as aforesaid, accruing in, and to said company, in proportion to the amount of his deposit note or notes. The directors shall, as often as they deem necessary, after receiving notice of any loss or damage by fire, sustained by any member, and ascertaining the same, or after the rendition of any judgment against such company for loss or damage, settle and determine the sums to be paid by the several members thereof as their respective portion of such loss, and publish the same in such manner as they shall see fit, or as the by-laws shall have prescribed, and the sum to be paid by each member shall always be in proportion to the original amount of his deposit note or notes, and shall be paid to the officers of the company within thirty (30) days next after the publication of said notice. And if any member shall, for the space of thirty (30) days after the publication of said notice and service of such notice upon such member by mail, directed to him at his post office, addressed as written in or upon his application for insurance, neglect or refuse to pay the sum assessed upon him as his proportion of any loss as aforesaid, in such case the directors may sue for and recover the whole amount of his deposit note or notes, with cost of suit, but execution shall only issue for assessments and costs as they accrue. If the whole amount of the deposit notes shall be insufficient to pay the loss occasioned by any fire or fires, in such case the sufferers insured by the said company shall receive towards

making good their respective losses a proportional share of the whole amount of said notes, according to the sums by them respectively insured, but no member shall ever be required to pay for any loss, occasioned by fire or inland navigation, more than the whole amount of his deposit note.

14. "MUTUAL" OR "JOINT STOCK" INDICATED ON POLICY, ETC.] § 14. Every fire and inland navigation insurance company hereafter organized, shall, if it be a mutual company, embody the word "mutual" in its title, which shall appear on the first page of every policy and renewal receipt; and every company doing business as a joint stock company, shall, upon the face of its policy, in some suitable manner, express that such policy is a stock policy.

15. SUITS.] § 15. Suits of law may be maintained by any corporation formed under this act against any of its members or stockholders, for any cause relating to the business of such corporation; also suits at law may be prosecuted and maintained by any member or stockholder against such corporation, for any losses which may have accrued if payment is withheld after such losses may have become due.

16. LIABILITY OF CORPORATION, ETC.—NOTES.] § 16. The trustees and corporators of any company organized under this (act) shall be severally liable for all debts or responsibilities of such company to the amount by him or them subscribed, until the whole amount of the capital of such company shall have been paid in and a certificate therefor recorded, as hereinbefore provided. Notes taken in advance of premiums, under this act, are not to be considered debts of the company in determining whether a company is insolvent, but are to be regarded as assets of the company.

17. JOINT STOCK AND MUTUAL COMPANIES MAY EXTEND CHARTER.] § 17. Any existing joint stock or mutual fire insurance company heretofore incorporated under the laws of this State, and any company organized under this act, having a capital of at least $100,000 may, without increasing its capital, at any time within two years previous to the termination of its charter, after giving notice at least once a week, for four weeks, successively, in a newspaper published in the county where such company is located, of such intention, and with a declaration under its corporate seal, signed by the president and two-thirds of its directors of their desire for such extension, extend the term of its original charter to the time specified in the twenty-fifth section of this act, by altering and amending the same so as to accord with the provisions of this act, and filing a copy of such amended charter with the declaration aforesaid, in the office of the auditor of public accounts, whereupon the same proceedings shall be had as are required in the tenth section of this act.

MUTUAL MAY BECOME JOINT STOCK.] And any mutual insurance company, heretofore incorporated or organized under any of the laws of this State, having surplus assets, aside from premiums and stock notes sufficient to reinsure all its outstanding risks, after having given notice, once a week, for four weeks, of their intention and of the meeting hereinafter provided for, in a newspaper published in the county where such company is located, may, with the consent of two-thirds

of the corporators or members present at any regular annual meeting or at any special meeting duly called for the purpose, or with the consent in writing of two-thirds of the corporators or members of such company, and the consent also of three-fourths of the trustees or directors, unless otherwise provided in the charter, become a joint stock company, by conforming its charter to, and otherwise proceeding in accordance with this act; and every member of such company, on the day of said annual or special meeting, or the date of said written consent, shall be entitled to priority in subscribing to the capital stock of said company, for one month after the opening of the books of subscription to such capital stock, in proportion to the amount of cash premiums paid in by such members on unexpired risks in force on the day of said annual or special meeting, or the date of said written consent; and every company so extended or changed, shall come under the provisions of this act, in the same manner as if it had been incorporated originally under this act: *Provided*, That no mutual fire insurance company shall be entitled to reorganize under this law, or to have its organization renewed or extended unless it shall actually be doing business at the time of the passage of this act. [As amended by act approved May 21, 1877. In force July 1, 1877.]

18. INCREASE OF CAPITAL STOCK.] § 18. Any existing fire insurance company, and any company formed under this law, may at any time increase the amount of its capital stock, after notice given once a week for four weeks in any newspaper published in the county where such company is located, of such intentions, with the written consent of three-fourths, in amount, of its stockholders, unless otherwise provided in its charter, or if a mutual company, with the unanimous consent of its trustees, unless otherwise provided in its charter, by altering or amending their charter in this respect, and filing a copy of their charter so amended, together with a declaration under its corporate seal, signed by its president and directors, of their desire (so to do), with such written consent of three-fourths, in amount, of its stockholders, or the unanimous consent of the trustees as aforesaid, to such increase, in the office of the auditor of public accounts, and upon the same proceedings had as are required by the tenth section of this act.

19. COMPANIES HERETOFORE FORMED SUBJECT TO THIS ACT.] § 19. All insurance companies heretofore organized in the State of Illinois, and now doing business in this State, are hereby brought under all the provisions of this act except that their capitals may continue of the amounts and character named in and authorized by their respective charters, during the existing term of such charters, and the investments of the capital and assets of such companies may remain the same as prescribed by their charters, anything in this act to the contrary notwithstanding, and such companies shall also be entitled to all the privileges and powers granted by said charters.

20. BODIES CORPORATE OR POLITIC.] § 20. All companies incorporated or extended under this act shall be deemed and taken to be bodies corporate and politic in fact and in name, and shall be subject to all the provisions of law in relation to corporations, so far as the same are practicable.

21. [ANNUAL REPORT TO AUDITOR.] § 21. It shall be the duty of the president or vice-president and secretary of each company organized under this act, or incorporated under any law of this State, annually, on the first day of January of each year, or within one month thereafter, to prepare under their own oath, and deposit in the office of the auditor of public accounts, a statement of the condition of such company on the thirty-first day of December then next preceding, exhibiting the following facts and items in the following form, namely:

First.—The amount of the capital stock of the company actually paid in;

Second.—The property or assets held by the company, specifying:

1. The value, or as nearly as may be, of the real estate held by such company.
2. The amount of cash on hand and deposited in banks to the credit of the company, specifying in what banks the same are deposited.
3. The amount of cash in the hands of agents and in course of transmission.
4. The amount of loans secured by mortgages and bonds, constituting the first lien on real estate on which there shall be less than one year's interest due or owing.
5. The amount of loans on which interest shall not have been paid within one year previous to such statement.
6. The amount due the company on which judgments have been obtained.
7. The amount of stocks of this State, of the United States, of any incorporated city of this State, and of any other stocks owned by the company, specifying the amount, number of shares and par and market value of each kind of stock.
8. The amount of stocks held thereby as collateral security for loans, with the amount loaned on each kind of stock, its par value and the market value.
9. The amount of assessments on stock or premium notes (paid and unpaid), specifying each.
10. The amount of interest actually due and unpaid.
11. The amount of premium notes on hand on which policies are issued.
12. The amount of installment notes on hand on which policies are issued.

Third.—The liability of such company, specifying:

1. The amount of losses due and yet unpaid.
2. The amount of claims for losses resisted by the company.
3. The amount of losses incurred during the year, including those claimed and not yet due, and including the probable amount of those reported to the company, upon which no action has been taken.
4. The amount of dividends declared and due, and remaining unpaid.
5. The amount of dividends, if any, declared but not yet due.
6. The amount of money borrowed, and security, if any, given for the payment thereof.
7. All other existing claims against the company, and also the

gross amount of outstanding risks, and the gross amount of premiums thereon unearned.

Fourth.—The income of the company during the preceding year, specifying:

1. The amount of cash premiums received.
2. The amount of notes received for premiums.
3. The amount of interest money received.
4. The amount of income received from other sources.

Fifth.—The expenditures during the preceding year, specifying:

1. The amount of losses paid during the year, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which such losses were estimated in such preceding statement.
2. The amount of dividends paid during the year.
3. The amount of expenses paid during the year, including commissions and fees to agents and officers of the company.
4. The amount paid in taxes, specifying the amount paid in this State.
5. The amount of all other payments and expenditures.

It shall be the duty of the auditor to establish a classification of risks into any number of classes, not less than four, according to the degree of hazard of such risks; and the auditor shall require said companies, as a part of the aforementioned statement, to give the number of policies in force covering property embraced in each of said classes, and the aggregate amount at risk upon property in each class.

INQUIRIES BY AUDITOR—REPLIES.] The auditor of public accounts is hereby authorized and empowered to address any inquiries to any insurance company, or the secretary thereof, in relation to its doings or condition, or any other matter connected with its transactions; and it shall be the duty of any company so addressed to promptly reply, in writing, to any such inquiries.

REPORT CONCERNING ORIGINAL NOTES—REPEAL.] The statement of any company, the capital of which is composed in whole or in part of notes, shall, in addition to the foregoing, exhibit the amount of notes originally forming the capital, and also what proportion of said notes is still held by such company and considered capital. The statements herein provided for shall be in lieu of any and all statements now required by any existing law, and the several provisions of the acts approved February 14, 1855, and January 22, 1857, are hereby repealed.

PENALTY FOR NOT MAKING REPORT.] Every insurance company organized under any law of this State, failing to make and deposit such statements or to reply to any inquiry of the said auditor, shall be subject to the penalty of five hundred dollars, and an additional five hundred dollars for every month that such company shall continue thereafter to transact any business of insurance.

AUDITOR TO FURNISH FORM OF REPORT.] It shall be the duty of the auditor of public accounts to cause to be prepared and furnished to each of the companies, and to the attorneys of companies incorpor-

ated by other States and foreign governments, printed forms of the statements required by this act; and he may, from time to time, make such changes in the form of such statements as shall seem to him best adapted to elicit from the companies a true exhibit of their condition in respect to the several points hereinbefore mentioned. It shall be the duty of the auditor of public accounts to cause the information contained in the statements required by this section, to be arranged in a tabular form and printed in his biennial report.

22. FOREIGN COMPANIES—AGENT—SERVICE OF PROCESS.] § 22. It shall not be lawful for any insurance company, association or partnership, incorporated by or organized under the laws of any other State of the United States, or any foreign government, for any of the purposes specified in this act, directly or indirectly to take risks or transact any business of insurance in this State, unless possessed of the amount of actual capital required of similar companies formed under the provisions of this act; and any such company desiring to transact any such business as aforesaid, by any agent or agents, in this State, shall first appoint an attorney in this State, on whom process of law can be served and file in the office of the auditor of public accounts a written instrument, duly signed and sealed, certifying such appointment, which shall continue until another attorney be substituted; and any process issued by any court of record in this State, and served upon such attorney by the proper officer of the county in which such attorney may reside, or may be found, shall be deemed a sufficient service of process upon such company; but service of process upon such company may also be made in any other manner provided by law.

SERVICE AFTER COMPANY STOPS BUSINESS.] In case any insurance company, not incorporated in this State, shall cease to transact business in this State according to the laws thereof, the agents last designated, or acting as such for such corporation, shall be deemed to continue agents for such corporation for the purpose of serving process for commencing action upon any policy or liability issued or contracted while such corporation transacted business in this State, and service of such process, for the causes aforesaid, upon any such agent, shall be deemed a valid personal service upon such corporation.

COPY OF CHARTER, ETC., FILED WITH AUDITOR.] And every such company, association or partnership, shall also file a certified copy of their charter, or deed of settlement, together with a statement, under the oath of the president or vice president, or other chief officer, and secretary of the company for which he or they may act, stating the name of the company and place where located, the amount of its capital, with a detailed statement of its assets, showing the amount of cash on hand, in bank, or in the hands of agents; the amount of real estate, and how much the same is incumbered by mortgage; the number of shares of stock of every kind owned by the company; the par and market value of the same; amount loaned on bond and mortgage; the amount loaned on other security, stating the kind and the amount loaned on each, and the estimated value of the whole amount of such securities; any other assets or property of the company; also stating the indebtedness of the company; the amount of losses adjusted and unpaid; the amount incurred and in process of adjustment; the amount resisted by the company as illegal and fraudulent, and all other claims

existing against the company; also a copy of the last annual report, if any, made under any law of the State by which such company was incorporated; and no agent shall be allowed to transact business for any such company whose capital is impaired to the extent of twenty per cent. thereof, while such deficiency shall continue.

DEPOSIT.] And any company incorporated by or organized under any foreign government shall, in addition to the foregoing, deposit with the auditor of public accounts, for the benefit and security of policy-holders residing in the United States, a sum not less than two hundred thousand dollars, in stocks of the United States or of the State of Illinois, in all cases to be equal to a stock producing six per cent. per annum—said stocks not to be received by said auditor at a rate above their par value, or above their current market value—or in bonds and mortgages on improved unincumbered real estate in the State of Illinois, worth fifty per cent. more than the amount loaned thereon.

EXCHANGE OF SECURITIES.] The stocks and securities so deposited may be exchanged, from time to time, for other securities, receivable as aforesaid.

INTEREST—FEES.] And so long as the company so depositing shall continue solvent, and comply with the laws of this State, such company or association may be permitted by the said auditor to collect the interest or dividends on said deposits; and where a deposit is made of bonds and mortgages, accompanied by full abstracts of title and searches, the fees for an examination of title by counsel, to be paid by the party making the deposit, shall not exceed twenty dollars for each mortgage, and the fee for an appraisal of property shall be five dollars to each appraiser, not exceeding two, besides expenses for each mortgage.

COMPLIANCE WITH THIS ACT NECESSARY.] Nor shall it be lawful for any agent or agents to act for any company or companies referred to in this section, directly or indirectly, in taking risks or transacting the business of fire or inland navigation insurance in this State, without procuring from the auditor of public accounts a certificate of authority, stating that such company has complied with all the requisitions of this act which apply to such companies, and the name of the attorney appointed to act for the company.

STATEMENT RENEWED YEARLY—RENEWAL OF CERTIFICATE.] The statement and evidences of investments required by this section shall be renewed from year to year, in such manner and form as may be required by said auditor, with an additional statement of the amount of premiums received and losses incurred in this State during the preceding year, so long as such agency continues; and the said auditor, on being satisfied that the capital, securities and investments remain secure, as hereinbefore provided, shall furnish a renewal of the certificate, as aforesaid.

PENALTY.] Any violation of any of the provisions of this act shall subject the party violating the same to a penalty of five hundred dollars for each violation, and of the additional sum of one hundred dollars for each month during which any such agent shall neglect to file such affidavits and statements as are herein required.

AGENTS, ETC., ADVERTISED.] Every agent of any insurance company shall, in all advertisements of such agency, publish the location of the company, giving the name of the city, town or village in which the company is located, and the State or government under the laws of which it is organized. The term "agent" or "agents," used in this section, shall include an acknowledged agent, surveyor, broker, or any other person or persons who shall, in any manner, aid in transacting the insurance business of any insurance company not incorporated by the laws of this State.

SECTION APPLIES TO ALL FOREIGN COMPANIES, ETC.] The provisions of this section shall apply to all foreign companies, partnership associations and individuals, whether incorporated or not. All insurance companies, associations or partnerships incorporated by or organized under the laws of any other State of the United States, or any foreign government, transacting the business of fire or marine insurance, or any other kind of insurance, in this State, shall make annual statements of their condition and affairs to the auditor's office, in the same manner and in the same form as similar companies organized under the laws of this State.

PENALTY FOR NEGLECT TO MAKE ANNUAL STATEMENT.] In case of neglect or refusal to make such annual statement, as aforesaid, all persons acting in this State as agents or otherwise, in transacting the business of insurance for said companies, corporations, associations, partnerships or individuals, shall be subject to the same penalties provided by law in case of the failure of any insurance company organized under the laws of this State to make an annual statement, as provided in this act.

WHEN STATEMENTS FILED.] Foreign insurance companies shall be required to make and file their annual statements and evidences on the first day of January in each year, or within thirty days thereafter, made out for the year ending on the preceding 30th of September. The supplementary annual statements of their business and affairs in the United States, duly verified by the resident manager of such company, shall be filed in the month of January in each year, made out for the year ending the 31st day of December immediately preceding.

22½. WHEN AUDITOR MAY REVOKE CERTIFICATE.] § 22½. If the auditor has or shall have at any time satisfactory evidence that any annual statement or other report required or authorized by this act, made or to be made by any officer or officers, agent or agents of any corporation, association or partnership, incorporated by or organized under the laws of any State of the United States or any foreign government, is false, it shall be the duty of said auditor to immediately revoke the certificate of authority granted on behalf of such corporation, association or partnership, and mail a copy of such revocation to each agent thereof in this State. And the agent or agents of such corporation, association or partnership, after such notice, shall discontinue the issuing of any new policy and the renewal of any policy previously issued; and such revocation shall not be set aside nor any new certificate of authority given until satisfactory evidence shall have been furnished to said auditor that such

corporation, association or partnership is in substance and in fact in the condition set fourth in such false statement or report, and that all the requirements of said act are fully complied with. [Added by amendment approved May 31, 1877. In force July 1, 1877.]

23. EXAMINATION BY AUDITOR OR HIS APPOINTEE.] § 23. It shall be the duty of the auditor of public accounts, whenever he shall deem it expedient so to do, in person, or by one or more persons to be appointed by him for that purpose, not officers or agents of, or in any manner interested in, any insurance company doing business in this State, except as policy holders, to examine into the affairs of any insurance company incorporated in this State, or doing business by its agents in this State; and it shall be the duty of the officers or agents of any such company, doing business in this State; to cause their books to be opened for the inspection of the auditor or the person or persons so appointed, and otherwise to facilitate such examinations, so far as it may be in their power to do, and to pay all reasonable expenses incurred therein; and for that purpose, the said auditor or person or persons so appointed by him shall have the power to examine, under oath, the officers and agents of any company, relative to the business of said company; and whenever the said auditor shall deem it for the best interests of the public so to do, he shall publish the result of said investigation in one or more papers this State.

WHEN DEFICIENCY APPEARS—PROCEEDINGS.] And whenever it shall appear to the said auditor, from such examination, that the assets of any company incorporated in this State are insufficient to justifiy the continuance in business of any such company, he may direct the officers thereof to require the stockholders to pay in the amount of such deficiency, within such period as he may designate in such requisition; or he shall communicate the fact to the attorney-general, whose duty it shall then become to apply to the circuit court of the county in which the principal office of said company shall be located, for an order requiring them to show cause why the business of such company should not be closed; and the court shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it shall appear to the satisfaction of said court that the assets and funds of said company are not sufficient, as aforesaid, or that the interests of the public so require, the said court shall decree a dissolution of said company, and a distribution of its effects, The said circuit court shall have power to refer the application of the attorney-general to a master in chancery, to inquire into and report upon the facts stated therein. Any company receiving the aforesaid requisition from the said auditor, shall forthwith call upon its stockholders for such amounts as will make its capital equal to the amount fixed by the charter of said company; and in case any stockholder of such company shall refuse or neglect to pay the amount so called for, after notice personally given, or by advertisement, in such time and manner as the said auditor shall approve, it shall be lawful for the said company to require the return of the original certificate of stock held by such stockholder, and, in lieu thereof, to issue new certificates for such number of shares as the said stockholder may be entitled to, in the proportion that the ascertained value of the funds of the said company may be found to bear to the original capital of the said

company—the value of such shares, for which new certificates shall be issued, to be ascertained under the direction of the said auditor, and the company paying for the fractional parts of shares; and it shall be lawful for the directors of such company to create new stock, and dispose of the same, and to issue new certificates therefor, to an amount sufficient to make up the original capital of the company.

LIABILITY OF STOCKHOLDERS FOR ADDITIONAL LOSS.] And it is hereby declared that, in the event of any additional losses accruing upon new risks taken after the expiration of the period limited by the said auditor, in the aforesaid requisition for the filling up of the deficiency in the capital of such company, and before said deficiency shall have been made up, the directors shall be individually liable to the extent thereof.

IN CASE OF MUTUAL COMPANIES.] And if, upon such examination, it shall appear to the said auditor that the assets of any company chartered on the plan of mutual insurance, under this act, are insufficient to justify the continuance of such company in business, it shall be his duty to proceed in relation to such company in the same manner as is herein required in regard to joint stock companies; and the trustees or directors of such company are hereby made personally liable for any losses which may be sustained upon risks taken after the expiration of the period limited by said auditor for filling up the deficiency in the capital, and before such deficiency shall have been made up.

TRANSFER OF STOCK NOT TO RELIEVE.] Any transfer of the stock of any company organized under this act, made during the pending of any such investigation, shall not release the party making the transfer from his liability for losses which may have accrued previous to the transfer.

WHEN COMPANY UNSOUND, BUSINESS STOP.] And whenever it shall appear to the said auditor, from the report of the person or persons appointed by him, that the affairs of any company not incorporated by the laws of this State are in an unsound condition, he shall revoke the certificates granted in behalf of such company, and shall cause a notification thereof to be published in a newspaper of general circulation, published in the city of Springfield, and mail a copy thereof to each agent of the company; and the agent or agents of such company, after such notice, shall be required to discontinue the issuing of any new policy, and the renewal of any previously issued.

24. SUITS FOR PENALTIES.] § 24. Every penalty provided for by this act shall be sued for and recovered in the name of the people, by the State's attorney of the county in which the company or the agent or agents so violating shall be situated; and one half of said penalty, when recovered, shall be paid into the treasury of said county, and the other half to the informer of such violation; and in case of the non-payment of such penalty, the party so offending shall be liable to imprisonment for a period not exceeding six months, in the discretion of any court having cognizance thereof. Such penalties may also be sued for and recovered, in the name of the people, by the attorney general, and when sued for and collected by him, shall be paid into the State treasury.

25. DURATION OF COMPANY—LEGISLATIVE CONTROL, ETC.] § 25. All companies incorporated or extended under this act, may provide in their charters for not more than thirty years' duration, but the legislature may at any time alter or amend this act, and provide for the closing up of the business and affairs of any company formed under it. Nothing herein contained shall be construed to prevent subsequent extension of the charters of companies organized or extended under this act.

26. RIGHTS OF OLD COMPANIES.] § 26. Companies, other than those organized under the laws of this State, which may have received certificates of authority for the year 1869, prior to the passage of this act, shall be permitted to continue to transact the business of insurance without further statement until the 31st day of January, 1870.

LIEN ON STOCK.] Any fire, or fire and marine, insurance company chartered by this State, may have a lien, by passing a by-law to that effect, upon the stock or certificate of profits owned by any member, for any debt hereafter to become due the said company for premiums, by stating that the said stock is subject to any such liens upon the certificates of stock or profits. Any such lien may be waived, in writing, by the consent of the president of said company, upon the transfer of any such stock.

STOCK IMPAIRED—REDUCTION OF STOCK.] Whenever it shall appear to the auditor of public accounts, from an examination made by him in the manner prescribed by law, that the capital stock of any joint stock company, organized pursuant to law, is impaired to an amount exceeding twenty-five per cent. of such capital, and he shall be of the opinion that the interests of the public will not be prejudiced by permitting such company to continue business with a reduced capital, it shall be lawful for such company, with the permission of the said auditor, to reduce its capital stock and the par value of the shares thereof, to such amount as the said auditor may, under his hand and official seal, certify to be proper, and as shall, in his opinion, be justified by the assets and property of such company: *Provided*, that no part of such assets and property shall be distributed to the stockholders: *And, provided, further*, that the capital stock of any such company shall not be reduced to an amount less than the sum now required by law for the organization of a new company under the general insurance laws, for the transaction of business at the place where such company is located, and of the kind which such company is authorized to transact. No reduction of the capital of any such company shall be made, except upon a resolution of its board of directors, approved by at least two-thirds of the directors, and certified under its corporate seal, signed by the president and at least two-thirds of the directors, and proved or acknowledged in the manner required by law for the proof or acknowledgment of conveyances; which certificate shall be filed in the office of said auditor before any action shall be had by him thereon. The auditor of public accounts, in case he shall permit any such company to reduce its capital in the manner provided in this act, shall execute the certificate required by this act in duplicate, and deliver one of such certificates to the officers of such company, who shall forthwith file the same with the clerk of the county in which such company is located, and the other such certificate shall be filed

in the office of said auditor. Such company, upon filing the certificate with the county clerk, as required by this act, shall, with such reduced capital, possess the same rights, and be subject to the same liabilities, that it possessed or was subject to at the time of the reduction of its capital. And the charter of such company shall be deemed to be amended in respect to the amount of capital and the par value of the shares, so as to conform to such reduction. It shall be lawful for the said company to require the return of the original certificate of stock held by each stockholder, and in lieu thereof to issue new certificates for such number of shares as each stockholder may be entitled to, in the proportion that the reduced capital may be found to bear to the original capital of the company. It shall be lawful for any such company, after its capital shall be so reduced as aforesaid, to increase its capital stock in the mode prescribed by this law.

RECEIVERS, ETC., TO MAKE STATEMENTS.] It shall be the duty of all receivers and trustees of insurance companies, during the month of January in each year, and at any other time when required by the auditor of public accounts, to make and file annual and other statements of their assets and liabilities, and of their income and expenditures, in the same manner and form, and under the same penalties, as the officers of such companies are now required by law to make annual and other statements to the auditor's office.

PUBLICATION OF ANNUAL STATEMENTS.] And the said auditor shall also cause its annual statements required to be filed by this act to be published in two daily newspapers of general circulation, the one printed in the city of Chicago, and the other printed in the city of Springfield, not less than fifteen days.

27. FEES.] § 27. There shall be paid by every company, association, person or persons, or agent, to whom this act shall apply, the following fees: For filing the declaration or the certified copy of a charter herein required, the sum of thirty dollars; for filing the annual statement required ten dolllars; for each certificate of authority to agents of companies or associations not incorporated under the laws of this State, two dollars; for each certificate of authority to agents of companies incorporated under the laws of this State, fifty cents; for every copy of paper filed in this office the sum of twenty cents per folio; and for affixing the seal of said office to such copy and certifying the same, one dollar. And in case two or more companies shall combine and effect insurance under a joint policy, each and every company shall pay the fees provided herein, the same as if each company wrote separate and distinct policies: *Provided*, that the net amount of all fees over and above the cost of performing the clerical labor connected therewith shall not exceed, under this act, the sum of five thousand dollars, and that any amount above that sum shall be paid over to the State treasurer: *And, provided, further*, that the auditor shall render account, in his biennial report, of fees received by him under the provisions of this act.

28. AGENTS RESPONSIBLE—EMBEZZLEMENT BY.] § 28. Agents appointed by any company doing business in this State to solicit for applications for insurance, to collect the premiums on the same, and to transact the other duties of agents in such cases shall be held person-

ally responsible to such company for any moneys received by them for such company; and in case any such agent shall embezzle or fraudulently convert to his own use, or shall take or secrete with intent to embezzle and convert to his own use, without consent of such company, any money belonging to such company, which shall have come into his possession, or shall be under his care by virtue of his agency, he shall be deemed, by so doing, to have committed the crime of larceny, and, on conviction, shall be subject to the fines and penalties provided by the statutes in such cases.

29. RECIPROCITY.] § 29. Whenever the existing or future laws of any State of the United States, or any other kingdom or country, shall require of insurance companies incorporated by or organized under the laws of this State, and having agencies in such other State, kingdom or country, any deposit or securities in such State, kingdom or country, for the protection of policy holders, or otherwise, of any payment for taxes, fines, penalties, certificates of authority, license fees, or otherwise, greater than the amount required for such purposes from similar companies of other States by the then existing laws of this State, then, and in every such case, all companies of such States, establishing, or having heretofore established, an agency or agencies in the State, shall be and are hereby required to make the same deposit for a like purpose with the auditor of this State, and to pay to the auditor for taxes, fines, penalties, certificates of authority, license fees, and otherwise, an amount equal to the amount of such charges and payments imposed by the laws of such State upon the companies of this State and the agents thereof: *Provided*, that the payment required of such foreign companies shall in no case be less than required by this act.

30. TAX ON NET RECEIPTS.] § 30. Every agent of any insurance company, incorporated by the authority of any other State or government, shall return to the proper officer of the county, town or municipality in which the agency is established, in the month of May, annually, the amount of the net receipts of such agency for the preceding year, which shall be entered on the tax lists of the county town and municipality, and subject to the same rate of taxation, for all purposes,—State, county, town and municipal—that other personal property is subject to at the place where located; said tax to be in lieu of all town and municipal licenses; and all laws and parts of laws inconsistent herewith are hereby repealed: *Provided*, that the provisions of this section shall not be construed to prohibit cities having an organized fire department from levying a tax, or license fee, not exceeding two per cent. in accordance with the provisions of their respective charters, on the gross receipts of such agency, to be applied exclusively to the support of the fire department of such city. [As amended by act approved May 31, 1879. In force July 1, 1879.

31. TOWNSHIP COMPANIES EXCEPTED.] § 31. Nothing in this act shall be so construed as to interfere with the workings or organization of any insurance company organized under an act of the General Assembly, entitled "An act to authorize the formation of township insurance companies," approved February 20, 1867, or to any township insurance company chartered by act of this General Assembly.

32. WHEN TAKES EFFECT.] § 32. This act shall take effect from and after its passage: *Provided*, that companies other than those organized under the laws of this State which may have received licenses for the year A. D. 1869, prior to the passage of this act, shall not be obliged to renew application during the said year. But such company shall be subject to examination at the discretion of the auditor of public accounts, as hereinbefore provided: *Also provided*, that the examination of companies already organized under the laws of this State, shall, for the year 1869, be made in the month of July next, or as soon thereafter as possible.

DEPOSITS OF FOREIGN INSURANCE COMPANIES.

AN ACT *relating to deposits to be made by Foreign Insurance Companies.* [*Approved and in force March* 19, 1872.]

33. WHEN FOREIGN COMPANY NEED NOT DEPOSIT HERE.] SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That when any fire, or fire and marine, insurance company, organized under the laws of any foreign government, shall file with the auditor of public accounts a certificate of the superintendent of the insurance department of any other State, stating that a deposit of two hundred thousand dollars, or the equivalent of that amount, for the protection of the policyholders in the United States, has been made by said company in that State in accordance with the existing laws thereof, said company shall not be required to make such deposit in this State so long as said deposit shall remain intact with the superintendent of the insurance department or treasurer of said State, a certificate of which, from the superintendent of the insurance department of that State, shall be annually filed with the auditor of public accounts of this State.

34. SECURITIES BY FOREIGN COMPANIES.] § 2. All fire, or fire and marine, insurance companies organized under the laws of any foreign country, establishing, or having heretofore established, an agency or agencies in this State, shall be and are hereby allowed to make the deposit required by the laws of this State, in such bonds, stocks, or other securities of such foreign country: *Provided*, the same shall not be received for more than their par value, nor shall they, in any case, be valued at more than their current market value.

35. EMERGENCY.] § 3. The recent conflagration in Chicago having deprived the people of the State of Illinois of the means of ample insurance on their buildings and goods, an emergency exists requiring this act to be of immediate force and effect; therefore, this act shall take effect and be in force from and after its passage.

LIFE INSURANCE.

AN ACT *to organize and regulate the business of Life Insurance.* [*Approved March* 26, 1869. *In force July* 1, 1869.]

36. GUARANTEE CAPITAL—INVESTMENT OF.] SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That before any life insurance company goes into operation under the laws of this State, a guarantee capital of at least one hundred thousand dollars shall be paid in money, and invested in the stocks of the United States or of this State, or of any city or town in this State, estimated at their market value, or in such other stocks and securities as may be approved by the auditor of public accounts, or in mortgages being first liens on real estate in this State—the said real estate being worth at least twice the amount of the money loaned thereon, with abstract showing a good and sufficient title, and the certificate of two reputable landholders, under oath, certifying to the value of said property.

37. EXAMINATION BY AUDITOR—FEE.] § 2. No policy shall be issued until a certificate from the auditor has been obtained authorizing such company to issue policies. The said auditor shall examine the capital and the majority of the directors shall make oath that the money has been paid in by the stockholders towards payment of their respective shares, and not for any other purpose, and that it is intended that the same shall remain as the capital of the company, to be invested as required by the laws of this State. Every insurance company incorporated in this State shall pay to said auditor, for the examination required by this section, the sum of thirty dollars.

38. SECTION ONE APPLIES TO FOREIGN COMPANIES.] § 3. It shall not be lawful for any person to act within this State, as agent, or otherwise in receiving or procuring applications for life insurance, or in any manner to aid in transacting the business of life insurance, referred to in the first section of this act, for any company or association incorporated by or organized under the laws of any other State government, unless such company has conformed in such State, or in this State, to the same requirements in regard to capital that are imposed, by section one of this act, upon companies in this State, or, in lieu thereof, has actual assets to the amount of at least one hundred thousand dollars invested in the same manner as is prescribed in regard to capital in section one of this act.

39. ELECTION OF DIRECTORS BY MUTUAL COMPANIES.] § 4. The subscribers or holders of guarantee stock in a life insurance company organized on the mutual or stock and mutual plan, shall choose the first board of directors; and at all subsequent elections they shall choose one-half of the directors, and the holders of mutual policies the other half, until the redemption of the guarantee stock, when the holders of mutual policies shall elect all the directors.

40. ANNUAL STATEMENT.] § 5. Every life insurance company incorporated in this State, or doing business in this State, shall, on or before the first day of March, in each year, transmit to the auditor, and file in his office, a statement of its business standing and affairs,

in the form prescribed or authorized by law, and adapted to the business done by such company, signed and sworn to by the president or vice-president and secretary, and made out for the year ending on the preceding thirty-first day of December.

41. FORM OF STATEMENT.] § 6. The form for life insurance companies shall be as follows: 1st. Name of the company. 2d. When chartered. 3d. For what period. 4th. Where located. 5th. State in full the assets of the company. 6th. Number of shares owned in any bank; state par value, cost, and the market value per share. 7th. Number of shares owned in any railroad; stating the corporate name of each, and the amount invested in each, at cost, on its books; state the par value and market value of each share. 8th. Amount owned in railroad bonds; state par value, cost and market value, per share. 9th. Amount invested in real estate, at cost, on the books of the company. 10th. Amount loaned on mortgages of real estate, and estimated value of said real estate. 11th. Amount loaned on notes secured by collaterals of personal property. 12th. Amount loaned on notes without collaterals. 13th. State, in full, all other investments. 14th. How much, included in the foregoing statements of assets, consists of premium notes on policies not returned as now in force. 15th. Number, date, kind and amount of each outstanding policy, and age of the insured, excepting such policies as are subject to a valuation by the proper officer in some other State, which shall be shown by certificate from the insurance department of such State. 16th. Number and amount of each class or kind of policies which have, within the year, ceased to be in force; how terminated; what has been paid to the legal holders of policies. 17th. Amount of losses ascertained and unpaid. 18th. Amount of losses claimed against the company, whether acknowledged as due or not by the company. 19th. Amount due from the company on its declared, promised or acknowledged indebtedness, or other claims, including dividends, bonuses or distribution of surplus, or as profits. 20th. Amount received for premiums the past year. 21st. Amount received for premiums in cash. 22d. Amount received for premiums in promissory notes or securities. 23d. Amount received for interest the past year. 24th. Amount paid for interest the past year. 25th. Amount of guarantee funds, and state particularly whether the same are in cash or subscription notes. 26th. How are dividends, distributions of surplus funds, bonuses or estimated profits, paid?—whether in cash, scrip, or otherwise on credit, and whether on demand; or if on credit, for what length of time, and whether payable at a specific time or indefinitely, at the discretion of the company. 27th. Amount paid for the expenses, taxes and commissions the past year, classified.

42. FOREIGN COMPANIES—STATEMENT OF.] § 7. All life insurance companies chartered or organized in any other State of the United States, or beyond the limits of the United States, and doing business in this State, shall make an annual statement of their condition and affairs to the insurance department, in the same manner and in the same form as similar companies organized under the laws of this State. The auditor shall have authority to extend the time for filing such statement, for reasons which he shall deem good and sufficient, whether the company is organized in this State or elsewhere. The statements

herein provided for shall be in lieu of any and all statements now required by any existing law, and the several provisions of the acts approved February the twelfth, eighteen hundred and fifty-three, February the fourteenth, eighteen hundred and fifty five, and January the twenty-second, eighteen hundred and fifty-seven, are hereby repealed so far as they relate to life insurance.

43. COMPANIES WITHOUT THE UNITED STATES—STATEMENT OF.] § 8. Life insurance companies chartered beyond the limits of the United States, and doing business in this State, shall make a return of their standing on the thirty-first day of December in each year, agreeable to the form required by this act of other companies doing a similar business in this State—said return to be made to the auditor on or before the first day of April, annually, and verified and sworn to before some consul or vice-consul of the United States, by two or more of the principal officers of such insurance company.

44. PENALTY.] § 9. Any company doing business in this State, neglecting to make returns in the manner and within the time hereinbefore authorized and prescribed, shall forfeit one hundred dollars, for each day's neglect; and every company that willfully makes false statements, shall be liable to a fine of not less than five hundred dollars, nor more than one thousand dollars. Any new business done by any company, or its agents, in this State, after neglect to make the prescribed returns, shall be deemed to be done in violation of law.

45. WHEN COMPANIES MUST STOP ISSUING POLICIES.] § 10. When the actual funds of any life insurance company doing business in this State, are not of a net value equal to the net value of its policies, according to the "combined experience" or "actuaries" rate of mortality, with interest at four per centum per annum, it shall be the duty of the auditor to give notice to such company and its agents to discontinue issuing new polices within this State until such time as its funds have become equal to its liabilities, valuing its policies as aforesaid. Any officer or agent who, after such notice has been given, issues or delivers a new policy from and on behalf of such company before its funds have become equal to its liabilities as aforesaid, shall forfeit, for each offense, a sum not exceeding one thousand dollars.

46. INVESTMENT OF FUNDS.] § 11. It shall be lawful for any company, organized in this State, to invest its funds or accumulations in the stocks of the United States, or of this State, or of any city or town in this State, or in any national bank, or in such other stocks and securities as may be approved by the auditor, or in mortgages (being first liens) on real estate, being worth at least twice the amount of money loaned theron.

47. INVESTMENT IN OTHER STATES.] § 12. When any life insurance company, organized under the laws of this State, shall transact business in any other State, it may invest its surplus funds in such State in like security and under the same restrictions as in this State.

48. INQUIRIES BY AUDITOR—REVOKE CERTIFICATE.] § 13. The auditor is hereby authorized and empowered to address any inquiries to any life insurance company, or to the secretary thereof, in relation to

its doings or conditions, or any other matter connected with its transactions, and it shall be the duty of any such company, so addressed, to reply promptly, in writing, to any such inquiries; and all such companies, not incorporated under the laws of this State, failing to answer all such inquiries, shall not be authorized to transact any business in this State, and their certificates of authority may be revoked and canceled.

EXAMINATION BY AUDITOR.] It shall be the duty of the auditor to make, or cause to be made, an examination of the condition and affairs of any life insurance company doing business in this State, whenever he shall deem it expedient to do so, and also whenever he shall have good reason to suspect the correctness of any annual statement, or that the affairs of any company making such statements are in an unsound condition.

49. DIVIDENDS BY MUTUAL COMPANIES.] § 14. Life insurance companies doing business in this State, which do business upon the principle of mutual insurance, or the members of which are entitled to share in the surplus funds thereof, may make distribution of such surplus as they have accumulated, annually, or once in two, three, four or five years, as the directors thereof may, from time to time, determine. In determining the amount of the surplus to be distributed, there shall be reserved an amount not less than the aggregate net value of all outstanding policies; said value being computed by the "combined experience" or "actuary" rate of mortality, with interest not exceeding four per cent.

50. FOREIGN COMPANIES—AGENT—SERVICE OF PROCESS.] § 15. Every life insurance company not organized in this State, before doing business in this State, shall in writing appoint an attorney, resident in this State, upon whom all lawful process against the company may be served with like effect as if the company existed in this State; and said writing or power of attorney shall stipulate and agree, on the part of the company making the same, that any lawful process against said company, which is served on said attorney, shall be of the same legal force and validity as if served on said company. A copy of the writing, duly certified and authenticated, shall be filed in the office of the auditor, and copies, certified by him, shall be sufficient evidence. This agency shall be continued while any liability remains outstanding against the company in this State, and the power shall not be revoked until the same power is given to another, and a like copy filed as aforesaid. Service upon said attorney shall be deemed as sufficient service upon the company.

51. STATE TREASURER TO RECEIVE DEPOSITS—INCOME.] § 16. The treasurer of the State in his official capacity, shall take and hold on deposit the securities of any life insurance company incorporated under the laws of this State, which are deposited by any such company for the purpose of securing policy-holders and complying with the laws of any State, in order to enable such company to transact business in such State. The company depositing such securities shall have the right to receive the income thereof, and at any time to exchange the same, according to the laws of the State in which they may be doing business.

52. VALUING POLICIES—FEES.] § 17. If any life insurance company organized in this State, or in any other State of the United States, or in any foreign country, whose policies are not valued by the insurance department or proper officers of any other State, shall transact business in this State, it shall be the duty of the auditor to calculate the existing value of all outstanding policies of such company; and every such company shall pay, annually, to the auditor of this State, by way of compensation for the valuation of its policies, three cents on every thousand dollars insured by it on lives.

53. WHAT LIFE COMPANIES NOT TO INSURE.] § 18. No life insurance company organized under the laws of this State shall issue policies insuring fire, or marine, or accident, or live stock risks, nor do any banking business.

54. RIGHTS OF MARRIED WOMEN.] § 19. It shall be lawful for any married woman, by herself and in her own name, or in the name of any third person, with his assent as her trustee, to cause to be insured, for her sole use, the life of her husband, for any definite period, or for the term of his natural life; and in the case of her surviving such period or term, the sum or net amount of the insurance becoming due and payable by the terms of the insurance shall be payable to her, to and for her own use, free from the claims of the representatives of the husband or of any of his creditors: *Provided, however*, that if the premium of such policy is paid by any person with the intent to defraud his creditors, an amount equal to the premium so paid, with interest thereon, shall inure to the benefit of said creditors, subject, however, to the statute of limitations. The amount of the insurance may be made payable, in case of the death of the wife before the period at which it becomes due, to his, her or their children, for their use, as shall be provided in the policy of insurance, and their guardian if under age.

55. RECIPROCITY.] § 20. Whenever the existing or future laws of any other State of the United States shall require of life insurance companies incorporated by or organized under the laws of this State, and having agencies in such other State, or of the agents thereof, any deposit of securities in such State for the protection of policyholders, or otherwise, or any payment for taxes, fines, penalties, certificates of authority, license fees, or otherwise, greater than the amount required for such purposes from similar companies of other States by the then existing laws of this State, then and in every such case, all life insurance companies of such States establishing, or having heretofore established, an agency or agencies in this State, shall be and are hereby required to make the same deposit, for a like purpose, with the State treasurer of this State, and to pay to the auditor for taxes, fines, penalties, certificates of authority, license fees, or any other obligation, an amount equal to the amount of such charges and payments imposed by the laws of such other State upon the companies of this State, and the agents thereof.

56. FOREIGN COMPANIES—DEPOSIT COPY OF CHARTER, ETC.] § 21. Every life insurance company not organized under the laws of this State, shall, before doing business in this State, deposit with the auditor a copy of the charter of the company, and a statement, signed

and sworn to by the president or vice president and secretary, in the form prescribed or authorized for the annual statement adapted to the business done by such company.

57. To exhibit name of company, etc.] § 22. Every person acting for a life insurance company not incorporated in this State, shall exhibit, in conspicuous letters, on the sign designating his place of business, the name of the State under whose authority the company he represents has been incorporated; and said company and agent shall also have printed, in large type, the name of said State upon all policies issued to citizens of this State, and on all placards, pamphlets and circulars published, issued or circulated in this State by them or him, relating to the business of said company.

58. Who agent of foreign company.] § 23. Whoever solicits insurance on behalf of any life company not chartered by, and not established within, this State, or transmits for any person other than himself, an application for life insurance, or a policy of life insurance, to or from such company, or advertises that he will receive or transmit the same, shall be held to be an agent of such company to all intents and purposes, and subject to all the duties, requisitions, liabilities and penalties set forth in the laws of this State, relating to life insurance companies not incorporated by the legislature thereof.

59. Penalty.] § 24. Any agent making insurance in violation of any law of this State regulating life insurance companies, shall forfeit for each offense, a sum not exceeding five hundred dollars.

60. Auditors' fees.] § 25. For filing the annual statement required in the office of the auditor, the said auditor shall be paid ten dollars; for each agent's certificate of authority, two dollars; for every copy of a paper filed in the auditor's office, twenty cents per folio; and for affixing the seal of said office to such copy and certifying the same, one dollar; and for examining the affairs of any company, when deemed necessary, the expenses incurred therein shall be paid to the said auditor by the company.

61. Publishing statements.] § 26. The auditor shall annually prepare and print, in a single document, the information contained in the statements made under this act, and shall communicate the same to the general assembly. He shall also cause the annual statements required to be filed by this act to be published in two daily newspapers of general circulation, the one printed in the city of Chicago, and the other in the city of Springfield, not less than one month.

62. Repeal.] § 27. All acts or parts of acts inconsistent with this act, are hereby repealed.

63. Act takes effect.] § 28. This act shall be deemed a public act, and take effect and be in force from and after the first day of July next. But nothing herein contained shall prevent the auditor from receiving statements from companies desiring to file the same, as herein specified, at any time after the approval of this act by the governor.

SURRENDER OF SECURITIES.

AN ACT *to authorize the State Treasurer to surrender securities heretofore deposited by Life Insurance Companies.* [*Approved April* 3, 1872. *In force July* 1, 1872.]

64. WHEN COMPANY RETIRES FROM BUSINESS.] SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That any life insurance company which desires to retire from business, may notify the holders of its outstanding policies, and publish its intention to retire from business, for thirty successive days, in some newspaper published in Chicago, and having a general circulation; and if such policyholders elect to have their policies canceled, such company shall refund and pay to the policyholders, within ninety days thereafter, the net value of the policy, valued in accordance with the laws of this State, after deducting any indebtedness that may exist against such policy, or, if any policyholders shall so elect, the company may secure for such persons re-insurance in another company—which re-insurance shall equal in value the net value of such policies as aforesaid, and the company assuming the insurance shall issue to each of such persons a policy, in lieu of such policies as may be canceled for that purpose. When it appears to the auditor that any such company has canceled its policies, as herein provided, and has no other liability existing—a statement of which shall be certified by the affidavit of the president and secretary of the company—he shall give such company his certificate, upon which it may withdraw its securities deposited with the State treasurer: *Provided*, that any company having discontinued business prior to the passage of this act, by obtaining the cancellation of its policies as herein provided, may in like manner withdraw its securities so deposited, or such company may withdraw its securities by depositing other *bona fide* securities of the kind provided by law, in lieu therefor, to the amount of all its outstanding policies.

COUNTY FIRE INSURANCE COMPANIES.

AN ACT *to organize and regulate County Fire Insurance Companies.* [*Approved June* 2, 1877. *In force July* 1, 1877.]

65. NUMBER OF PERSONS REQUIRED TO ORGANIZE.] SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That any number of persons, not less than twenty-five, residing in any county in this State, who collectively shall own property of not less than fifty thousand dollars ($50,000) in value, which they desire to have insured, may form an incorporated company for the purpose of mutual insurance against loss or damage by fire or lightning.

66. DECLARATION—COPY OF CHARTER.] § 2. Such persons shall file with the auditor of public accounts a declaration of their inten-

tion to form a company for the purposes expressed in the preceding section, which declaration shall be signed by all the corporators and shall contain a copy of the charter proposed to be adopted by them. Such charter shall set forth the name of the corporation which shall embrace the name of the city, town or village in which the business office of such company is to be located and the intended duration of the company and if it is found conformable to this act and not inconsistent with the laws and constitution of this State, the auditor shall thereupon deliver to such persons a certified copy of the charter, which, on being filed in the office of the county clerk of the county where the office of such company is to be located, shall be their authority to organize and commence business. Such certified copy of the charter may be used in evidence for or against said company with the same effect as the original: *Provided*, That such charter so obtained shall be subject to control of, and modification by the General Assembly.

67. DIRECTORS—ELECTION—VOTING.] § 3. The number of directors shall be nine—five of whom shall constitute a quorum to do business—to be elected from the corporators by ballot and hold their offices until their successors are elected and qualified. In the election of the first board of directors each corporator shall be entitled to one vote. All subsequent elections except to fill vacancies shall be held at the annual meeting of the company, which shall be on the first Tuesday after the first Monday of January in each year, and every person insured shall be entitled to as many votes as there are directors to be elected, and an equal additional number for each five hundred dollars ($500) that he may be insured in the company, and may cast the same in person or by proxy, distributing them among the same or a less number of candidates than the number of directors to be elected or cumulating them upon one candidate, as he shall think fit.

68. OFFICERS.] § 4. The directors shall elect from their number a president and a treasurer, and shall also elect a secretary, who may or may not be a member of the company, all of whom shall hold their office for one year, and until their successors are elected and qualified.

69. BONDS OF TREASURER AND SECRETARY.] § 5. The treasurer and secretary shall give bonds to the company for the faithful performance of their duties, in such amounts as shall be prescribed by the board of directors.

70. POWERS OF CORPORATION.] § 6. Such corporation and its directors shall possess the usual powers and be subject to the usual duties of corporations and directors thereof, and may make such by-laws, not inconsistent with the constitution or laws of this State, as may be deemed necessary for the management of its affairs in accordance with the provisions of this act; also to prescribe the duties of its officers and to fix their compensation, and to alter and amend its by-laws when necessary.

71. QUALIFICATION FOR MEMBERSHIP.] § 7. Any person owning property in the county for which any such company is formed, if he resides in the county in which such company is located, may become a member of such company by insuring therein, and shall be entitled

to all the rights and privileges appertaining thereto, but no person not residing in the county in which the company is formed shall become a director of such company.

72. PROPERTY INSURED—POLICIES—DURATION—AMOUNT—PAYMENT.] § 8. Such company may issue policies only on detached dwellings, barns (except livery, boarding and hotel barns), and other farm buildings and such property as may properly be contained therein, for any time not exceeding five years, and not to extend beyond the limited duration of the charter, and for an amount not to exceed three thousand dollars ($3,000) on any one risk. All persons so insured shall give their obligation to the company binding themselves, their heirs and assigns to pay their *pro rata* share to the company of the necessary expenses and of all losses by fire or lightning which may be sustained by any member thereof during the time for which their respective policies are written; and they shall also, at the time of effecting the insurance, pay such percentage in cash, and such other charge as may be required by the rules or by-laws of the company.

73. CLASSIFICATION OF PROPERTY.] § 9. Any such company may classify the property insured therein at the time of issuing policies thereon, under different rates, corresponding as nearly as may be to the greater or less risk from fire or lightning and loss which may attach to each several building insured.

74. LOCATION OF PROPERTY INSURED.] § 10. No such company shall insure any property beyond the limits of the county comprised in the formation of the company, nor shall they insure any property within the limits of any city containing over twelve thousand (12,000) inhabitants at the time of the organization of such company.

75. PROOF OF LOSS—REFERENCE—AWARD.] § 11. Every member of such company who may sustain loss or damage by fire or lightning, shall immediately notify the president of such company, or, in his absence the secretary thereof, stating the amount of damage or loss claimed, and if not more than fifty dollars ($50.00), then the president and secretary shall proceed to ascertain the amount of such loss or damage and adjust the same. If the claim for damage or loss shall be an amount greater than fifty dollars ($50.00), then the president of such company, or in case of his absence, the secretary thereof shall forthwith convene the directors of such company, whose duty it shall be when convened to appoint a committee of not less than three members of such company to ascertain the amount of such damage or loss. If, in either case, there is a failure of the parties to agree upon the amount of such damage or loss, the claimant may appeal to the judge of the county court of the county in which such company is located, whose duty it shall be to appoint three persons as a committee of reference, who shall have full authority to examine witnesses and to determine all matters in dispute, and shall make their award in writing, to the president of such company, and such award shall be final. The pay of said committee shall be two dollars ($2.00) per day for each day's service so rendered, and four cents for each mile necessarily traversed in the discharge of their duties, which shall be paid by the claimant, unless the award of said committee shall exceed the sum offered by the company in liquidation of such loss or damage, in which case said expenses shall be paid by the company.

76. ASSESSMENT TO PAY LOSS.] § 12. Whenever the amount of any loss shall have been ascertained, which exceeds in amount the cash funds of the company, the president shall convene the directors of said company, who shall make an assessment upon all the property to the amount for which each several piece of property is insured, taken in connection with the rate of premium under which it may be classified.

77. NOTICE OF ASSESSMENT.] § 13. It shall be the duty of the president, whenever such assessment shall have been made to immediately notify every person composing such company, personally, by an agent or by letter sent to his usual post-office address, of the amount of such loss, and the sum due from him as his share thereof, and of the time when and to whom such payment is to be made; but such time shall not be less than thirty nor more than ninety days from the date of such notice.

78. SUITS TO RECOVER ASSESSMENTS—ACTIONS AGAINST COMPANY.] § 14. Suits at law may be brought against any member of such company who shall neglect or refuse to pay any assessment made upon him by the provisions of this act; and the directors of any company so formed, who shall willfully refuse or neglect to perform the duties imposed upon them by the provisions of this act, shall be liable in their individual capacity to the person sustaining such loss. Suits at law may also be brought and maintained against any such company, by members thereof, for losses sustained, if payment is withheld after such losses have become due.

79. ANNUAL STATEMENT.] § 15. It shall be the duty of the secretary to prepare an annual statement, showing the condition of such company on the thirty-first day of December and present the same at the annual meeting.

80. WITHDRAWAL FROM COMPANY—NOTICE—CANCELLATION OF POLICY.] § 16. Any member of such company may withdraw therefrom by surrendering his policy for cancellation, at any time while the company continues the business for which it was organized, by giving notice in writing to the secretary thereof and paying his share of all claims then existing against said company: *Provided*, That by the withdrawal of any such member, the number of the members remaining in the company shall not be reduced below the original number of corporators, or that the assets will not be reduced below the amount at the time of the organization: *Provided, further*, That the company shall have power to cancel or terminate any policy by giving the insured notice to that effect.

81. ANNUAL STATEMENT TO AUDITOR.] § 17. It shall be the duty of the president and secretary of every such company on the first day of January of each year, or within one month thereafter, to prepare under their own oath and transmit to the auditor of public accounts, a statement of the condition of the company on the thirty-first day of December then next preceding, in such form as the auditor may direct. If upon examination, he is of the opinion that such company is doing business correctly, in accordance with the provisions of this act, he shall thereupon furnish the company his certificate, which shall

be deemed authority to continue business the ensuing year, subject, however, to subsequent provisions of this act. For such examination and certificate the company shall pay one dollar. Each company shall pay, at the time of organization, ten dollars ($10.00) for the auditor's services, all of which shall be paid into the State treasury and applied to the insurance fund.

82 PROCEEDING TO DISSOLVE COMPANY.] § 18. Any such company may be proceeded against and dissolved in the manner and upon the same conditions as provided in case of other insurance companies incorporated in this State.

83 TOWNSHIP INSURANCE COMPANIES MAY ACCEPT BENEFITS.] § 19. Any township or district insurance company formed under an act entitled "An act to revise the law in relation to township insurance companies," approved March 24, 1874, may with the written consent of two-thirds of the members, accept the provisions of this act and thereupon shall be governed by its provisions. Before any such company shall be entitled to the benefits thereof, the directors or a majority of them shall file with the auditor of public accounts the declaration provided for in section two of this act.

TOWNSHIP COMPANIES.

AN ACT *to revise the law in relation to Township Insurance Companies.* [*Approved March* 24, 1874. *In force July* 1, 1874.]

84 WHO MAY FORM.] SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That any number of persons, not less than twenty-five, residing in any congressional or political township or in one or more adjoining congressional or political townships in this State, not exceeding six in number, and without regard to county lines, who collectively shall own property of not less than fifty thousand dollars in value, which they desire to have insured, may form an incorporated company for the purpose of mutual insurance against loss or damage by fire or lightning.

85 HOW FORMED.] § 2. Such persons shall file with the auditor of public accounts a declaration of their intention to form a company for the purposes expressed in the preceding section, which declaration shall be signed by all the corporators, and shall contain a copy of the charter proposed to be adopted by them. Such charter shall set forth the name of the corporation, which shall embrace the name of the township in which the business office of such company is to be located, and the intended duration of the company; and if it be found conformable to this act, and not inconsistent with the laws and constitution of this State, the auditor shall thereupon deliver to such persons a certified copy of the charter, which, on being filed in the office of the county clerk of the county where the office of such com-

pany is to be located, shall be their authority to organize and commence business. Such certified copy of the charter may be used in evidence for or against said company, with the same effect as the original: *Provided*, that such charter so obtained shall be subject to control of and modification by the General Assembly.

86. DIRECTORS—ELECTION OF.] § 3. The number of directors shall be nine—five of whom shall constitute a quorum to do business—to be elected from the corporators by ballot, and hold their offices until their successors are elected and qualified. In the election of the first board of directors, each corporator shall be entitled to one vote. All subsequent elections, except to fill vacancies, shall be held at the annual meeting of the company, which shall be on the first Tuesday after the first Monday in January, in each year. And every person insured shall be entitled to as many votes as there are directors to be elected, and an equal additional number for each $500 that he may be insured in the company, and may cast the same in person or by proxy, distributing them among the same or a less number of candidates than the number of directors to be elected, or cumulating them upon one candidate, as he shall think fit.

87. PRESIDENT, TREASURER AND SECRETARY.] § 4. The directors shall elect from their number a president and a treasurer, and shall also elect a secretary, who may or may not be a member of the company—all of whom shall hold their office for one year, and until their successors are elected and qualified.

88. BONDS.] § 5. The treasurer and secretary shall each give bonds to the company for the faithful performance of their duties, in such amounts as shall be prescribed by the board of directors.

89. CORPORATE POWERS.] § 6. Such corporation and its directors shall possess the usual powers, and be subject to the usual duties, of corporations and directors thereof, and may make such by-laws, not inconsistent with the constitution or laws of this State, as may be deemed necessary for the management of its affairs, in accordance with the provisions of this act; also to prescribe the duties of its officers, and fix their compensation, and to alter and amend its by-laws when necessary.

90. MEMBERS.] § 7. Any person owning property in the district for which any such company is formed, if he resides in the county in which such district is in whole or in part situated, may become a member of such company by insuring therein, and shall be entitled to all the rights and privileges appertaining thereto; but a person not residing within the district for which the company is formed shall not become a director of such company.

91. [MANNER OF INSURING.] § 8. Such company may issue policies only on detached dwellings, barns (except livery, boarding and hotel barns,) and other farm buildings, and such property as may properly be contained therein, for any time not exceeding five years and not to extend beyond the limited duration of the charter, and for an amount not to exceed three thousand dollars on any one risk. All persons so insured shall give their obligation to the com-

pany, binding themselves, their heirs and assigns, to pay their *pro rata* share to the company of the necessary expenses, and of all losses by fire or lightning which may be sustained by any member thereof during the time for which their respective policies are written; and they shall, also, at the time of effecting the insurance, pay such percentage in cash, and such other charge as may be required by the rules or by-laws of the company.

92. RISKS CLASSIFIED.] § 9. Any such company may classify the property insured therein at the time of issuing policies thereon, under different rates, corresponding, as nearly as may be, to the greater or less risk from fire or lightning and loss which may attach to each several building insured.

93. WHEN COMPANY NOT TO INSURE.] § 10. No such company shall insure any property beyond the limits of the district comprised in the formation of the company, nor shall they insure any property within the limits of any city containing over twelve thousand inhabitants at the time of the organization of such company.

94. NOTICE OF LOSS—ADJUSTMENT—EXPENSE.] § 11. Every member of such company who may sustain loss or damage by fire or lightning shall immediately notify the president of such company, or in his absence the secretary thereof, stating the amount of damage or loss claimed, and if not more than fifty dollars ($50) then the president and secretary shall proceed to ascertain the amount of such loss or damage and adjust the same. If the claim for damage or loss shall be an amount greater than fifty dollars ($50), then the president of such company or in case of his absence the secretary thereof, shall forthwith convene the directors of such company, whose duty it shall be when convened to appoint a committee of not less than three members of such company to ascertain the amount of such damage or loss. If in either case there is a failure of the parties to agree upon the amount of such damage or loss, the claimant may appeal to the judge of the county court of the county in which the office of such company is located, whose duty it shall be to appoint three persons as a committee of reference, who shall have full authority to examine witnesses and to determine all matters in dispute and shall make their award in writing to the president of such company, and such award shall be final. The pay of said committee shall be two dollars ($2.00) per day for each day's service so rendered, and four cents for each mile necessarily traversed in the discharge of their duties, which shall be paid by the claimant, unless the award of said committee shall exceed the sum offered by the company in liquidation of such loss or damage, in which case said expenses shall be paid by the company. [As amended by act approved May 11, 1877. In force July 1, 1877.]

95. ASSESSMENTS.] § 12. Whenever the amount of any loss shall have been ascertained, which exceeds in amount the cash funds of the company, the president shall convene the directors of said company, who shall make an assessment upon all the property to the amount for which each several piece of property is insured, taken in connection with the rate of premium under which it may be classified.

96. NOTICE OF ASSESSMENT.] § 13. It shall be the duty of the president, whenever such assessment shall have been made, to immediately notify every person composing such company, personally, by an agent or by letter sent to his usual post office address, of the amount of such loss, and the sum due from him as his share thereof, and of the time when and to whom such payment is to be made; but such time shall not be less than thirty nor more than ninety days from the date of such notice.

97. SUITS.] § 14. Suits at law may be brought against any member of such company who shall neglect or refuse to pay any assessment made upon him by the provisions of this act; and the directors of any company so formed, who shall willfully refuse or neglect to perform the duties imposed upon them by the provisions of this act, shall be liable in their individual capacity, to the person sustaining such loss. Suits at law may also be brought and maintained against any such company, by members thereof, for losses sustained, if payment is withheld after such losses have become due.

98. ANNUAL STATEMENT.] § 15. It shall be the duty of the secretary to prepare an annual statement, showing the condition of such company on the thirty-first day of December, and present the same at the annual meeting.

99. WITHDRAWAL FROM COMPANY.] § 16. Any member of such company may withdraw therefrom by surrendering his policy for cancellation, at any time while the company continues the business for which it was organized, by giving notice in writing to the secretary thereof, and paying his share of all claims then existing against said company: *Provided*, that by the withdrawal of any such member the number of the members remaining in the company shall not be reduced below the original number of corporators, or that the assets will not be reduced below the amount at the time of the organization: *Provided, further*, that the company shall have power to cancel or terminate any policy by giving the insured notice to that effect.

100. REPORT TO AUDITOR—CERTIFICATE—FEES.] § 17. It shall be the duty of the president and secretary of every such company, on the first day of January of each year, or within one month thereafter, to prepare, under their own oath, and to transmit to the auditor of public accounts, a statement of the condition of the company on the thirty-first day of December then next preceding, in such form as the auditor may direct. If, upon examination, he is of the opinion that such company is doing business correctly, in accordance with the provisions of this act he shall thereupon furnish the company his certificate, which shall be deemed authority to continue business the ensuing year, subject, however, to subsequent provisions of this act. For such examination and certificate the company shall pay one dollar. Each company shall pay, at the time of organization, ten dollars for the auditor's services, all of which shall be paid into the state treasury and applied to the insurance fund.

101. DISSOLUTION.] § 18. Any such company may be proceeded against and dissolved in the manner and upon the same conditions as provided in case of other insurance companies incorporated in this State.

102. COMPANIES FORMED UNDER ACT OF 1872.] § 19. Any township insurance company formed under an act entitled "An act to incorporate and govern mutual fire insurance companies in townships," approved April 3, 1872, may, with the written consent of two-thirds of the members, accept the provisions of this act, and thereupon shall be governed by its provisions. Before any such company shall be entitled to the benefits thereof, the directors or a majority of them shall file with the auditor of public accounts the declaration provided for in section two of this act.

DISSOLUTION OF INSURANCE COMPANIES.

AN ACT *in regard to the dissolution of Insurance Companies.* [*Approved February* 17, 1874. *In force July* 1, 1874.]

103. INVOLUNTARY DISSOLUTION.] SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That if the auditor of state, upon examination of any insurance company incorporated in this State, is of the opinion that it is insolvent, or that its condition is such as to render its further continuance in business hazardous to the insured therein, or to the public, or that it has failed to comply with the rules, restrictions or conditions provided by law, or has exceeded or is exceeding its corporate powers, he shall apply by petition to a judge of any circuit court of this State to issue an injunction restraining such company, in whole or in part, from further proceeding with its business, until a full hearing can be had, or otherwise as he may direct. It shall be discretionary with such judge either to issue said injunction forthwith, or to grant an order for such company, upon such notice as he may prescribe, to show cause why said injunction should not issue, or to cause a hearing to be had on complaint and answer, or otherwise, as in ordinary proceedings in equity, before determining whether an injunction shall be issued. He may in all such cases make such orders and decrees, from time to time, as the exigencies and equities of the case may require, and in any case, after a full hearing of all parties interested, may dissolve, modify or perpetuate such injunction, and make all such orders and decrees as may be needful to suspend, restrain or prohibit the further continuance of the business of the company.

104. VOLUNTARY DISSOLUTION.] § 2. When a majority, in number or interest, of the members or stockholders of any insurance company incorporated in this State, desire to close its concerns, they may apply by petition to the circuit court of the circuit in which the company is located, setting forth in substance the grounds of their application; and the court, after due notice to all the parties interested, may proceed to hear the matter, and for reasonable cause decree a dis-

solution of the corporation; and corporations so dissolved shall be deemed and held extinct in all respects as if their charters had expired by their own limitation, subject, however, to the provisions hereinafter prescribed.

105. WHEN CHARTER EXTINCT.] § 3. The charters of all insurance companies incorporated in this State, which, either from neglect or by vote of their members or officers, or in obedience to the decree of any court, have ceased, or shall hereafter cease, for the period of one year, to transact the business for which they were organized, shall be deemed and held extinct in all respects as if they had expired by their own limitation; and the circuit court shall have authority, upon application, by the petition of the auditor of state, or of any person interested, to fix, by decree, the time within which such companies shall close their concerns: *Provided*, that this section shall not be construed to relieve any such company from its liabilities to the assured or any of its creditors.

106. CONTINUED AS TO CREDITORS, ETC.] § 4. Insurance companies whose charters expire by their own limitation or become forfeited by non user, or are dissolved by decree of court, or otherwise, shall, nevertheless, be continued bodies corporate for the term of two years after such expiration, forfeiture or dissolution, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and divide their capital stock and assets, but not for the purpose of continuing the business for which they were organized.

107. APPOINTMENT OF RECEIVER—HIS POWERS.] § 5. When the charter of any such insurance company expires, is forfeited or annulled, or the corporation is restrained from further prosecution of its business, or is dissolved, as hereinbefore provided, the court, on application of the auditor, or of a member, stockholder or creditor, may, at any time before the expiration of said two years, appoint one or more persons to be receivers, to take charge of the estate and effects of the company, including such securities as may be deposited with the auditor or treasurer of state, and to collect the debts due, and property belonging to it, with power to prosecute and defend suits in the name of the corporation, or in their own names, to appoint agents under them, and do all other acts necessary for the collection, marshaling and distributing of the assets of the company, and the closing of its concerns; and when necessary for the final settlement of its unfinished business, the powers of such receivers may be continued as long as the court deems necessary therefor.

108 DUTIES OF RECEIVER.] § 6. The receiver shall pay all debts due from the company, if the funds in his hands are sufficient therefor, and if not, he shall distribute the same ratably among the creditors who prove their debts, in such manner as the court may direct, and receivers may be authorized by the court to sell, convey and dispose of, and convert into money, any of the securities or assets of the company, for the purpose of paying such debts, and distributing such funds. If there is a balance remaining after the payment of the debts, the receiver

shall distribute the same among those who are justly entitled thereto, as members, stockholders, or otherwise, or their legal representatives.

109. RECEIVERS TO REPORT TO AUDITOR.] § 7. Receivers of insurance companies, appointed as aforesaid, shall report to the auditor of state, annually, in such manner as he shall prescribe, on or before the first day of January, and as much oftener as he may direct, and such reports, or abstracts, therefrom, may be incorporated into his annual report on insurance.

110 [COMPENSATION AND EXPENSES.] § 8. The compensation of receivers, and their expenses, shall be determined by decree of court, but shall not exceed the costs of court, and five per cent. of the amount collected of any of the assets of the company.

111. PRACTICE.] § 9. The mode of summoning parties into court, the rules of practice, course of procedure, and powers of courts, in cases arising under this act, shall be the same as in ordinary proceedings in equity in this State, except as herein otherwise provided.

PLATE GLASS, ACCIDENT AND STEAM BOILER INSURANCE COMPANIES.

AN ACT *to compel all insurance companies of other States and countries doing any kind of insurance business in this State, other than life to comply with the general fire and marine insurance law of this State, and to require deposits of Plate Glass, Accident and Steam Boiler Insurance Companies.* [*Approved May* 31, 1879. *In force July* 1, 1879.]

112. COMPANIES MUST COMPLY—CAPITAL AND DEPOSITS OF PLATE GLASS, ACCIDENT AND STEAM BOILER COMPANIES.] SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That every insurance company or association incorporated by or organized under the laws of any other State or any foreign government must comply with the requirements of the general insurance laws of this State governing fire, marine and inland navigation insurance companies doing business in the State of Illinois: before it shall be lawful for such company or association to take risks or transact any kind of insurance business in this State, other than that of life insurance; and such companies or associations, and all persons acting as agents thereof, shall be subject to the same penalties prescribed therein for a violation of any of the provisions thereof; *Provided*, that no plate glass, accident or steam-boiler insurance company shall be required to have a larger capital than one hundred thousand dollars actually paid up; nor shall any such company be authorized to transact business in this State without having previously deposited with the State treasurer of this State, or with the chief financial officer or commissioner of insurance of the State where such company is organized securities, duly assigned to such officer in trust for the benefit of all its policy-holders, the market value of which shall at all times be equal to one hundred thousand dollars. Said deposit shall consist of such like securities as fire insurance companies are, by the general insurance laws of this State, authorized to invest in.

ADVERTISEMENT OF ASSETS BY FIRE INSURANCE COMPANIES.

An Act to prevent fire insurance companies from advertising as assets anything not available for the payment of losses by fire. [*Approved May 31, 1879. In force July 1, 1879.*]

113. WHAT MUST NOT BE ADVERTISED.] SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That it shall not be lawful for any company, corporation, association, individual or individuals, now transacting, or now or hereafter authorized under any existing or future laws of this State, to transact the business of fire insurance within this State to state or represent, either by advertisement in any newspaper, magazine or periodical, or by any sign, circular, card, policy of insurance, or certificate of renewal thereof, or otherwise, any funds or assets to be in possession of any such company, corporation, association, individual or individuals, not actually possessed by such company, corporation, association, individual or individuals, and available for the payment of losses by fire, for the protection of holders of policies of fire and marine insurance.

114. MANNER OF ADVERTISING.] § 2. Every advertisement or public announcement, and every sign, circular or card, hereafter made or issued by any company, corporation, association, individual or individuals, or any officer, agent, manager or legal representative thereof, now or hereafter authorized by any existing or future laws of this State, to transact the business of fire insurance within this State, which shall purport to make known the financial standing of any such company, corporation, association, individual or individuals, shall exhibit the capital actually paid in cash, and the amount of net surplus of assets as allowed by the auditor of public accounts of the State of Illinois over all liabilities of such company, corporation, association, individual or individuals, actually available for the payment of fire and marine losses, and for the protection of holders of their policies of fire insurance, including in such liabilities the fund reserved for reinsurance of outstanding risks, and shall correspond with the verified statement made by the company, corporation, association, individual or individuals making or issuing the same, to the insurance department of this State next preceding the making or issuing of the same, but no such advertisement in any of the forms herein expressed shall include or contain any declaration or statement respecting any authorized or subscribed capital save only so much thereof as shall have been actually paid in cash and possessed by the company.

115. AUTHORIZED CAPITAL—HOW AND WHEN PUBLISHED.] § 3. Nothing in this act shall be construed to prohibit any insurance company, or association, from publishing in any policy or certificate of renewal thereof, a single item showing the amount of their authorized or subscribed capital as set forth in their charter, act of incorporation, deed of settlement, or articles of association, under which they are authorized to transact the business of insurance, provided however that such publication shall be made only upon such policies or certificates of renewal as shall be already printed, and contain the same at the time of the passage of this act, and further provided that no such

publication shall be made in any such policy or certificate unless the same shall be issued within six months from the passage of this act.

116. VIOLATION OF THIS ACT—PENALTY.] § 4. Any violation of any provision of this act, shall, for the first offense, subject the company, corporation, association, individual or individuals, guilty of such violation, to a penalty of five hundred dollars, to [be] sued for and recovered in the name of the people of the State of Illinois, with costs and expenses of such prosecution, by the State's attorney of any county in which the company, corporation, association, individual or individuals, shall be located, or may transact business or in any county where such offense may be committed, and such penalty when recovered, shall be paid into the treasury of such county for the benefit of the common school fund of such county. Every subsequent violation shall subject the company, corporation, association, individual or individuals, guilty of such violation, to pay a penalty of not less than one thousand dollars, which shall be sued for, recovered and disposed of, in like manner as for the first offense.

117. DUTY OF AUDITOR IN REGARD TO VIOLATIONS.] § 5. It shall be the duty of the auditor of public accounts to take cognizance of the provisions of this act, and to bring such violations to the attention of any company in respect to which such violation shall be committed, and in case of persistent violations of such provisions in respect to any company, it shall be his duty if the company be chartered by this State, to report the same to the attorney-general for dissolution; and if it be a company incorporated by any other State or country, it shall be his duty to revoke its authority to do business in this State.

118. REPEAL.] § 6. All acts or parts of acts inconsistent herewith, are hereby repealed.

REMOVAL OF SUITS FROM STATE TO UNITED STATES COURTS.

AN ACT *for the better regulation of the business of insurance, and for the protection of the citizens of this State in their dealings with insurance companies.* [*Approved June* 4, 1879. *In force July* 1, 1879.]

119. APPLICATION FOR LICENSE TO BE FILED WITH AUDITOR—FORM OF DECLARATION.] SECTION 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly*, It shall not be lawful for any insurance company, association or partnership incorporated by, or organized under the laws of any other State of the United States, or of any foreign government, for the purpose of insuring against loss or damage by fire, or against the risks of inland navigation or transportation or for the purpose of life insurance, or for the purpose of insuring persons against accidents, to take risks or to transact any business whatever, authorized by its charter, within this State, until it shall have complied with the following requirements, in addition to those already imposed by existing law: It shall first

file with the auditor of public accounts a written application for a license to do business in this State, duly signed by its president and secretary, with its corporate seal attached, which statement shall contain the following declaration: That it desires to transact the business of insurance in this State, that it will accept a license therefor according to the laws of this State, and that said license shall cease and terminate in case, and whenever it shall remove or make application to remove into any United States court any action or proceedings commenced in any of the State courts of this State, upon any claim or cause of action arising out of any business transaction, in fact done in this State; any permission, consent, agreement, condition or provision, incorporated in any contract, mortgage, note, bond, obligation or policy of insurance, authorizing or consenting to such removal, to the contrary notwithstanding.

120. LICENSE.] § 2. Upon complying with the requirements of section one (1) of this act together with all other requirements now imposed by existing law, the auditor of public accounts shall issue to such incorporated company, association or partnership a license to transact its business in this State, and no such license shall be issued until all of said requirements shall have been complied with; and no such incorporated company, association or partnership shall carry on the business for which it may have been incorporated, within this State, until it shall have obtained such license. The fee for such license shall be the same as that provided for by existing law, to be paid by the incorporated company, association or partnership so securing such license.

121. PENALTY FOR REMOVAL OF SUITS.] § 3. If any such incorporated company, association or partnership shall remove or make application to remove into any United States court, any action or proceeding commenced in any State court of this State upon a claim or cause of action arising out of any business or transaction in fact, done in this State, although there may have been a stipulation authorizing such removal, or if it shall violate, or fail to comply with, any of the other requirements or conditions now imposed by existing law, it is hereby made the imperative duty of the auditor of public accounts, at once, to revoke, cancel, and annul the license issued to such incorporated company, association or partnership; and thereafter no such incorporated company, association or partnership shall transact within this State any of the business for which it was incorporated, until again duly licensed.

RENEWAL OF LICENSE AFTER REVOCATION.] In case such revocation of license shall be made because of the removal of, or the attempt to remove any action from a State court of this State to any United States court, no renewal of such license shall be made within three years after such revocation.

NOTICE OF REVOCATION.] Whenever any such license shall be revoked, the auditor of public accounts shall give notice of such revocation by mail, to the president and secretary of such corporation, and shall also cause a notice of the same to be published three times in some weekly public newspaper published in the city of Springfield. A

certified copy of the order of removal, shall be sufficient evidence of the removal of any cause.

122. PENALTY FOR TRANSACTING BUSINESS IN VIOLATION OF THE PROVISIONS OF THIS ACT.] § 4. Any such incorporated company, association or partnership which shall transact its business in this State in violation of the provisions of this act, shall, together with the agent or agents so unlawfully transacting said business, jointly and severally, be subject to a penalty of five hundred dollars ($500), to be sued for and recovered in the name of the people of the State of Illinois, by the State's attorney of the county in which such agent or agents may reside, and one-half of said penalty, when recovered, shall be paid into the treasury of said county, the other half to the informer of such violation: *Provided, however*, that any company whose license may have been revoked as aforesaid, shall thereafter be permitted to transact such business as may be absolutely necessary to wind up its business in this State and none other: *Provided, further*, that nothing in this act contained, shall be construed to prevent the filing of an information in the nature of a *quo warranto* against such corporations so violating the provisions of this act.

123 REPEAL.] § 5. All laws and parts of laws in conflict with the provisions of this act, are hereby repealed.

Main Street
Levee Street
Levee Street
Main Street
Lemp's Ice Houses
Saw Mill
Bull Wheel
St. Louis & Iron Mountain Railroad
Iron Mountain Railroad Co.
Mississippi River
West Line of Wharf as Established by the City
No. 958 City of St. Louis v. Myers page 70.
Scale of Feet

1

COPY of MAP and REPORT
SENT TO GOVERNOR BEVERIDGE OF
ILLINOIS SUBMITTED BY JOSEPH BROWN
MAYOR AND COUNCIL COMMITTEE ON
HARBOR OF ST LOUIS 10TH NOVEMBER 1874.